Vol. V

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1941

No. 163

WESTERN CARTRIDGE COMPANY AND WESTERN CARTRIDGE EMPLOYEES' INDEPENDENT UNION, ETC., PETITIONERS,

vs.

NATIONAL LABOR RELATIONS BOARD AND AMERICAN FEDERATION OF LABOR AND ITS AFFILIATED ORGANIZATIONS

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

FILED JULY 14, 1941

[fol. 1] At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit held in the City of Chicago and begun on the sixth day of October, in the year of our Lord one thousand nine hundred and forty-two, and of our Independence, the one hundred and sixty-seventh.

* * * * * * *

8142

WESTERN CARTRIDGE COMPANY, a Corporation, Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD and AMERICAN FEDERATION OF LABOR and its Affiliated Organizations, Respondents,

* * * * * * *

8155

WESTERN CARTRIDGE EMPLOYEES' INDEPENDENT UNION, a Voluntary Association and Trade Union, Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD, AMERICAN FEDERATION OF LABOR and its Affiliated Organizations, Respondents

* * * * * * *

Petitions to Review and set aside, and on request for enforcement of, an Order of the National Labor Relations Board

And to-wit: On the twentieth day of October, 1942, there was filed in the office of the Clerk of this Court, a Petition for a Review and the Setting Aside of an Order of the National Labor Relations Board, which said Petition is not copied here as the same is certified herewith under a separate certificate.

* * * * * * *

And, to-wit: On the eighteenth day of November, 1942, there was filed in the office of the Clerk of this Court, a Petition to review and set aside an Order of the National

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Labor Relations Board, which said Petition is not copied here as the same is certified herewith under a seperate certificate.

* * * * * * *

And, to-wit: On the seventh day of December, 1942, there was filed in the office of the Clerk of this Court, an Answer of the National Labor Relations Board and Request for Enforcement, which said Answer is in the words and figures following, to-wit:

[fol. 2] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 8142

WESTERN CARTRIDGE COMPANY, Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD and AMERICAN FEDERATION OF LABOR and Its Affiliated Organizations, Respondents.

On Petition to Review and Set Aside an Order of the National Labor Relations Board

Answer of the National Labor Relations Board and Request for Enforcement

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Seventh Circuit:

Comes now the National Labor Relations Board and, pursuant to the National Labor Relations Act (49 Stat. 449, 29 U. S. C., Sec. 151, *et seq.*), files this answer to the petition to review an order of the Board, filed herein, and this request for enforcement of the Board's order.

(1) Answering the allegations of the petition to review on pages 2 and 3 entitled, "Statement of the Nature of the Proceedings," the Board prays reference to the certified transcript of the entire record of the proceedings before the Board filed herein for a full and exact statement of the pleadings, evidence, findings of fact, conclusions of law, and order of the Board, and all other proceedings had in this matter before the Board.

[fol. 3] (2) The Board admits the allegations on pages 3 and 4 of the petition to review entitled, "Venue".

(3) The Board denies each and every allegation of error set forth under the caption "Statement of Points" on pages 4 to 11, inclusive, of the petition to review.

Wherefore, having answered each and every allegation contained in the petition to review, the Board requests this Honorable Court to deny said petition insofar as it requests that the order of the Board be set aside.

Further answering, the Board, pursuant to Section 10(e) of the National Labor Relations Act, respectfully requests this Honorable Court for enforcement of its order against petitioner dated September 16, 1942, entered in the proceeding before the Board entitled, "*In the Matter of Western Cartridge Company, a corporation,* and *American Federation of Labor and its affiliated organizations,*" which proceeding is designated in the records of the Board as Case No. C-2123. In support of its request for enforcement of this order, the Board alleges:

(a) Petitioner, a Delaware corporation, transacts business and has a manufacturing plant in the City of East Alton, Illinois; and the unfair labor practices occurred at that plant.

(b) Upon the proceedings had before the Board in Case No. C-2123, including, without limitation, the complaint, the answers, the hearing for the purpose of taking testimony, the Trial Examiner's Intermediate Report, the exceptions filed thereto, and the oral argument before the Board, more fully shown by the transcript of the entire record filed herein, to which reference is hereby made, the Board, on September 16, 1942, duly stated its findings of fact and conclusions of law and issued an order directed to petitioner, its officers, agents, successors, and assigns, as follows:

Order

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the Na-
[fol. 4] tional Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Western Cartridge Company, East Alton, Illinois, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Giving effect to its individual contracts of employment with employees or to any modification, continuation, extension, or renewal thereof, and from requesting its employees to enter into any similar contracts of employment;

(b) Dominating or interfering with the administration of Western Cartridge Employees Independent Union or with the formation or administration of any other labor organization of its employees, and from contributing support to Western Cartridge Employees Independent Union or to any other labor organization of its employees;

(c) Recognizing Western Cartridge Employees Independent Union as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, rates of pay, wages, hours of employment, or other conditions of employment;

(d) Giving effect to its agreements of August 12, 1937, March 18, 1941, and June 4, 1941, or to any other contracts or agreements it may have entered into with Western Cartridge Employees Independent Union in respect to rates of pay, wages, hours of employment, or other conditions of employment;

(e) Discouraging membership in International Molders and Foundry Workers Union of North America, Local No. 333, affiliated with the American Federation of Labor, or in any other labor organization of its employees, by discriminating in regard to the hire or tenure of employment or any term or condition of employment of any of its employees;

(f) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Withdraw all recognition from Western Cartridge Employees Independent Union as the representative of any

of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and completely disestablish Western Cartridge Employees Independent Union as such representative;

(b) Offer William Elliott immediate and full reinstatement to his former or a substantially equivalent position, without prejudice to his seniority and other rights and privileges;

[fol. 5] (c) Make whole William Elliott for any loss of pay he may have suffered by reason of the respondent's discrimination against him, by payment to him of a sum of money equal to the amount he would normally have earned as wages from July 25, 1941, the date of his discharge, to the date of the respondent's offer of reinstatement, less his net earnings during such period;

(d) Give separate written notice to each of its employees who has signed an individual contract of employment, or any modification, continuation, extension, or renewal thereof, that the respondent will not in any manner enforce or attempt to enforce the contract, that the employee is not required or expected because of the contract to deal individually with the respondent or to relinquish in any manner his right to engage in concerted activity, and that discontinuance of the contract is without prejudice to the assertion of any legal rights the employee may have acquired under it;

(e) Post immediately in conspicuous places throughout its plant at East Alton, Illinois, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) to (f) of this Order; (2) that the respondent will take the affirmative action set forth in paragraphs 2 (a) to (d) of this Order; and (3) that the respondent's employees are free to become or remain members of Chemical Workers Local Union No. 22574, or International Molders and Foundry Workers Union of North America, Local No. 333, both affiliated with the American Federation of Labor, and that the respondent will not discriminate against any employee

because of membership in, or activity on behalf of, said organizations;

(f) Notify the Regional Director for the Fourteenth Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

(c) Thereafter, on September 16, 1942, the Board duly served the aforesaid decision and order upon petitioner.

Wherefore, the Board respectfully prays this Honorable Court that it cause notice of the filing of this answer and request for enforcement and of the filing of the entire record in said proceedings before the Board to be served upon petitioner and that this Court take jurisdiction of the proceedings and of the questions determined therein and make and enter upon the pleadings, testimony, and evidence, and proceedings set forth in the transcript of said proceed-
[fol. 6] ings and upon the order made thereon, a decree denying the petition to review and enforcing in whole said order of the Board and requiring petitioner and its officers, agents, successors, and assigns to comply therewith.

(S.) Ernest A. Gross, Associate General Counsel, National Labor Relations Board.

Dated at Washington, D. C., this 4th day of December, 1942.

[fol. 7] District of Columbia, ss:

Ernest A. Gross, being first duly sworn, states that he is Associate General Counsel of the National Labor Relations Board; that he is authorized to and does make this verification in behalf of said Board; that he has read the foregoing answer and request for enforcement and has knowledge of the contents thereof; and that the statements made therein are true to the best of his knowledge and belief.

(S.) Ernest A. Gross, Associate General Counsel.

Subscribed and sworn to before me this 4th day of December, 1942. (S.) Joseph W. Kulkis, Notary Public, District of Columbia. My Commission expires April 15, 1947. (Seal.)

[fol. 8] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 8155

WESTERN CARTRIDGE EMPLOYEES' INDEPENDENT UNION, a Voluntary Association and Trade Union, Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD, AMERICAN FEDERATION OF LABOR AND ITS AFFILIATED ORGANIZATIONS, Respondents

On Petition to Review and Set Aside an Order of the National Labor Relations Board

ANSWER OF THE NATIONAL LABOR RELATIONS BOARD

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Seventh Circuit:

Comes now the National Labor Relations Board and, pursuant to the National Labor Relations Act (49 Stat. 449, 29 U. S. C., sec. 151, *et seq.*), files this answer to the petition filed herein to review and set aside the Board's order.

1. Answering the allegations of the petition relating to the proceedings before the Board, the Board prays reference, for a full and exact statement of the pleadings, findings of fact, conclusions of law, and order of the Board, to the certified record of the proceedings before the Board filed in *Western Cartridge Company, a Corporation* v. *National Labor Relations Board and American Federation of Labor and Its Affiliated Organizations*, No. 8142, which case was initiated by the petition of the Western Cartridge Company for review of the Board's order issued in the proceedings before the Board known as Case No. [fol. 9] C-2123 entitled *"In the Matter of Western Cartridge Company* and *American Federation of Labor and Its Affiliated Organizations."*

2. The Board denies each and every allegation of error contained in the petition.

Further answering, the Board avers that the proceedings had before it, the findings of fact, conclusions of law, and its order are in all respects valid and proper under the Act.

Wherefore, the Board respectfully prays this Honorable Court that the petition for review be denied, and the Board further prays that this Honorable Court cause notice of the filing of its answer to be served upon petitioner.

(S.) Ernest A. Gross, Associate General Counsel, National Labor Relations Board.

Dated at Washington, D. C., this 4th day of December 1942.

[fol. 10] District of Columbia, ss:

Ernest A. Gross, being first duly sworn, states that he is Associate General Counsel of the National Labor Relations Board, respondent herein, and that he is authorized to and does make this verification in behalf of said Board; that he has read the foregoing answer and has knowledge of the contents thereof; and that the statements made therein are true to the best of his knowledge, information, and belief.

(S.) Ernest A. Gross, Associate General Counsel.

Subscribed and sworn to before me this 4th day of December, 1942. (S.) Joseph W. Kulkis, Notary Public, District of Columbia. My Commission expires April 15, 1947. (Seal.)

[fol. 11] And on the same day, to-wit: On the seventh day of December, 1942, there was filed in the office of the Clerk of this Court, a Motion for Consolidation, which said Motion is in the words and figures following, to-wit:

[fol. 12] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 8142

WESTERN CARTRIDGE COMPANY, a Corporation, Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD and AMERICAN FEDERATION OF LABOR and Its Affiliated Organizations, Respondent

No. 8155

WESTERN CARTRIDGE EMPLOYEES' INDEPENDENT UNION, a Voluntary Association and Trade Union, Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD, AMERICAN FEDERATION OF LABOR and Its Affiliated Organizations, Respondents

Motion for Consolidation

Comes now the National Labor Relations Board and moves the Court for an order consolidating the above captioned causes for the purposes of briefing and argument.

On October 20, 1942, Western Cartridge Company filed a petition to review and set aside an order of the Board in Case No. C-2123, said cause being No. 8142 in this Court. On November 18, 1942, Western Cartridge Employees' Independent Union filed in this Court a petition to review and set aside the same order of the Board, said cause being No. 8155 in this Court. The Board respectfully represents that the issues involved in these causes are the same and can be satisfactorily argued, briefed and determined in one proceeding before this Court.

[fol. 13] Wherefore it is respectfully prayed that an order be made and entered consolidating the above captioned causes for the purposes of briefing and argument.

(S.) Ernest A. Gross, Associate General Counsel, National Labor Relations Board.

Dated at Washington, D. C., this 4th day of December, 1942.

[fol. 14] And afterwards to-wit: On the twelveth day of December, 1942, the following further proceedings were had and entered of record, to-wit:

Saturday, December, 1942.

Court met pursuant to adjournment.

Before: Hon. Will M. Sparks, Circuit Judge.

Petitions to Review and set aside, and on request for enforcement of, and Order of the National Labor Relations Board

8142

WESTERN CARTRIDGE COMPANY, a Corporation, Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD and AMERICAN FEDERATION OF LABOR and its Affiliated Organizations, Respondents

8155

WESTERN CARTRIDGE EMPLOYEES' INDEPENDENT UNION, a Voluntary Association and Trade Union, Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD, AMERICAN FEDERATION OF LABOR and its Affiliated Organizations, Respondents

On Motion of counsel for Respondent, not objected to by counsel for Petitioners, it is ordered that the above entitled appeals be, and they are hereby, consolidated for purposes of briefing and argument.

* * * * * * *

And afterwards, to-wit: On the sixteenth day of January, 1943, there was filed in the office of the Clerk of this Court, a Supplement to Brief of Petitioner, Western Cartridge Company, which said Supplement is not copied here as the same is certified herewith under a separate certificate.

* * * * * * *

And afterwards, to-wit: On the twenty-second day of January, 1943, there was filed in the office of the Clerk of this Court, the Appendix to Respondents' Brief, which said

Appendix is not copied here as the same is certified herewith under a separate certificate.

* * * * * * *

[fol. 15] And afterwards, to-wit: On the first day of March, 1943, there was filed in the office of the Clerk of this Court, the opinion of the Court, which said opinion is in the words and figures following, to-wit:

[fol. 16] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT, OCTOBER TERM, 1942, JANUARY SESSION, 1943

No. 8142, No. 8155

Petitions to Review and set aside, and on request for enforcement of, an Order of the National Labor Relations Board

WESTERN CARTRIDGE COMPANY, a Corporation, Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD and AMERICAN FEDERATION OF LABOR and Its Affiliated Organizations, Respondents

WESTERN CARTRIDGE EMPLOYEES' INDEPENDENT UNION, etc., Petitioner,

vs.

NATION LABOR RELATIONS BOARD, AMERICAN FEDERATION OF LABOR and Its Affiliated Organizations, Respondents

March 1, 1943

Before Evans, Minton, and Kerner, Circuit Judges

KERNER, Circuit Judge:

These cases are here on separate petitions by Western Cartridge Company (hereinafter referred to as "Company") and the Western Cartridge Employees' Independent Union (hereinafter referred to as "Independent") to review and set aside, and on request by the National Labor [fol. 17] Relations Board for the enforcement of, an order [1]

[1] 44 N. L. R. B. 1.

of the Board, issued pursuant to the provisions of § 10 (c) of the National Labor Relations Act, 29 U. S. C. A. § 151 *et seq.*, requiring the employer (1) to cease and desist from (a) giving effect to its individual contracts of employment with employees etc., (b) dominating Independent, (c) recognizing Independent, (d) giving effect to its certain agreements with Independent in respect to rates of pay, etc., (e) discouraging membership in the International Molders and Foundry Workers Union of North America, Local No. 333, affiliated with the American Federation of Labor, (f) in any other manner interfering with its employees in the exercise of their rights under § 7 of the Act; and (2), affirmatively to (a) withdraw all recognition from Independent, (b) offer William Elliott full reinstatement, and (c) make him whole for loss of pay.

The company is a Delaware corporation engaged in the manufacture of munitions and has more than 6000 employees at its East Alton, Illinois, plant. Jurisdiction is not in dispute.

The proceeding before the Board was instituted by the American Federation of Labor and charged that the company, in order to create a barrier to union organization among its employees, induced its employees to sign individual contracts which infringe rights guaranteed by the Act; that by continuing that practice after the effective date of the Act, the company violated § 8 (1); that it disparaged outside unions and warned its employees not to join such unions; and that by dominating and interfering with the formation of Independent and contributing to its support, and by discharging William Elliott, it violated § 8 (1)(2) and (3) of the Act.

The questions presented are (1) whether the Board's findings of fact concerning the unfair labor practices are supported by the evidence; (2) whether the Independent was accorded a fair hearing; and (3) whether the order is valid.

The record discloses that from 1915 to 1921 the company followed the practice of having its employees sign individual contracts, which, if lived up to, assured the employees of a bonus. It ceased its practice in 1921 because of the depression, but revived the practice in 1933, when [fol. 18] business was at a very low ebb and when there was much industrial unrest resulting in part from unionization.

The Company, since July, 1933, has urged its employees to sign the individual contracts. After three months' service, all new employees are either sent to the Personnel Department by their foremen or given notice to report there for an interview. In these interviews, the employees are told of the benefits which the contract provides and are urged to sign. They were told in writing that "The signing of such a contract is optional on your part." When a contract is about to expire, the employee is notified to report to the contract office for the purpose of signing a renewal. The contract is for a fixed term, either six months or one year, and obligates the employee to devote his full time throughout that term to the business of the company; breach of that undertaking entails, at the option of the company, the employee's immediate suspension or dismissal, and its faithful performance is made a condition precedent to the employee's receiving the bonus stipulated for in the contract. To obtain the bonus, the employee must continue in the employ of the company for the entire period of his contract. The contract also provides that the company may terminate it in the event of the "non-operation, or the material curtailment of the operations, of the plant * * * due to * * * strikes." The employee in such case forfeits the bonus plus any sum which the company has deducted from his wages pursuant to the contract if the contingency resulting in the shut-down or curtailment is due "to the fault of the employee."

About July 8, 1941, the company incorporated the East Alton Manufacturing Company, a Maryland corporation, which took over the operation of the smokeless powder division, and on August 2, the new corporation entered into a collective agreement with Local 22574, concerning which more anon, providing, among other things, that the individual contracts between the company and some 423 employees of the smokeless powder division should not be assigned to the new company, and that like contracts should not in the future be offered the employees of that division.

During the summer of 1933 a group of the company's employees began to discuss the question of whether they desired a company union or no union at all, and the subject was violently agitated throughout the plant. Thereupon, [fol. 19] Vice-President Olin addressed a mass meeting of the employees and discussed with them the possibility of

forming an employees representation plan, such as the company's Works Council Plan at New Haven.

There was no union among the company's employees from 1933 to 1937, but in the spring of 1937, after several C. I. O. organizing meetings had been held and some of the employees had signed applications for membership, steps were taken at the plant to oppose that movement and to organize the Independent. Charles Taylor, a machinist, was its principal organizer. He discussed plans for this organization with other employees, but before going ahead with its formation, Taylor called on General Manager Bassett to inquire whether the company had any objection to the formation of the Independent and whether the rights of the employees under the individual contracts would be adversely affected by the formation of the Independent. Bassett replied that they would not be, that the company would not object to the inside union provided the employees "stayed within their rights," and did not solicit members on company time and property. June 4, 1937, Taylor and his associates engaged an attorney and launched a membership drive during working hours, at times in the presence of foremen. The record does not disclose that the company voiced any objection to the use of its time for this purpose. June 25, 1937, Independent requested recognition and on July 26, submitted to the company a prepared working agreement. August 10, the company submitted to Independent a contract to remain in force for one year and thereafter until terminated by a prescribed written notice, recognizing Independent as the bargaining agent of the company's employees "with respect to all matters not covered by the contracts of employment between the Company and those of its employees who have made them"; stipulating that "neither the company nor the Independent admit or assert any right to change said contracts of employment without the consent of the parties thereto"; and providing "that if the parties should from time to time agree that a modification of the individual contract was desirable, the proposed change would be 'recommended' to the employees." This contract was executed on August 12, 1937.

In January, 1941, a campaign to organize the employees in the smokeless powder division was commenced and on [fol. 20] January 31 a mass meeting of these employees was

held, at which a large number signed applications for membership in the American Federation of Labor. February 5, Local 22574 was chartered, and on March 13 it asked for recognition which was denied on the ground that the unit was inappropriate. Thereupon, this local petitioned the Board requesting certification in the smokeless powder division. June 13, following an election, the Board certified the local as the exclusive bargaining representative in that division. After the local had won the election, the company disregarded the Board's unit determination, continued to recognize the Independent as the bargaining agent for all employees in the plant, and entered into a working agreement with the Independent.

The record also discloses that from 1937 to December, 1940, the membership of the Independent declined and that its position was being threatened by the campaign of the A. F. of L. To offset this advance, Independent's executive committee, in November 1940, appealed to Bassett and requested him "to do something to keep the [Independent's] membership up." The committee was informed that the company had authorized a wage bonus of two per cent to be given the signers of the individual contracts and that "if the union [Independent] got credit for it, it would build * * * [Independent's] membership up." After this conference, a notice to that effect was posted on the bulletin board. It also appears that throughout this period, particularly after the A. F. of L. had commenced its campaign, the company engaged in varied coercive measures to keep the employees from joining the A. F. of L. It will not be necessary to recite such evidence in detail. We cite, for example, the instance in which the superintendent of the smokeless powder division sent for the president of Local 22574 and said to him: "I expected a rough sort of a fellow—being mixed up with a union like you are," and told him that the union was "no good," adding revealingly, "Why don't you come in as a committee and talk with me about it instead of going over to East St. Louis and get[ting] a pot-bellied racketeer to do your business for you?" men who were "bosses and wouldn't work," men who "lived off the wages of employees paid out in union dues."

The company argues that under the language of *National Labor Relations Board* v. *Jones & Laughlin*, 301 U. S. 1, 45, [fol. 21] its duty to bargain collectively with representa-

tives of its employees does not preclude such individual contracts as it might elect to make directly with individual employees.

A similar contention was made in *National Labor Relations Board* v. *J. I. Case Company,* decided by this court on February 26, 1943, in which the respondent tendered to each of its employees a contract, execution being voluntary, fixing wages and terms of employment. A union certified as the exclusive bargaining representative requested the respondent to bargain collectively with it. Respondent refused on the ground it could not negotiate with the union in any matter affecting the rights and obligations of respondent and its employees "under the individual contracts." We indicated our belief that other decisions of the Supreme Court established the rule that any existing contractual right interfering with the effectuation of the legislative intent must yield to the duty imposed upon both employer and employee, and that contracts must be understood as having been made not only with reference to existing legislation, but also with reference to the possible exercise of the rightful authority of the Government, and that no obligation of contract may be invoked to defeat that authority. And we held that the power and right of the employer and employee to enter into individual contracts must be subordinated to and so effectuated as not to interfere with full achievement of the purpose of the Act.

The principal question in this case is whether the Board's findings of facts are supported by substantial evidence—that the company dominated and interfered with the formation of Independent, and whether the Board was justified in its conclusion that the company's conduct toward Local 22574 amounted to interference with its employees in the exercise of their rights under § 7 of the Act.

The company contends that the Board was not justified in finding that by urging and persuading its employees to sign the individual contracts after the Act went into effect, it had interfered with the employees' right to self-organization.

As to this aspect of the case, there is no dispute as to the evidence. That being so, the question is, what inference should be drawn from the evidence? That function belongs to the Board. Nor does the possibility of drawing either of two inconsistent inferences from the evidence pre-

[fol. 22] vent the Board from drawing one of them. *National Labor Relations Board* v. *Nevada etc.*, 316 U. S. 105. The Board found that the effect of the contracts has been to forestall union activity among the company's employees and to create a permanent barrier to union organization among them. We agree with counsel for the Board that interference is no less interference because it is accomplished through allurements rather than coercion, when, as here, the system is employed to stem a tide of organization and is adopted as a means of eliminating outside unions as collective bargaining agents of the company's employees, *National Licorice Co.* v. *National Labor Relations Board*, 309 U. S. 350. Such attempts have been condemned, *National Labor Relations Board* v. *Martin Bros. Box Co.*, 130 F. (2) 202.

The company and the Independent contend that the fact that the company welcomed the organization of the Independent, extended privileges to it and preferred that union to any other, does not constitute discrimination, domination of or interference with such union. With this contention, under the circumstances here appearing, we cannot agree. The employees must be free from all restraint or coercion by the employer. This freedom is their legal right. The Act imposes upon an employer total and complete impartiality, necessitating the utmost of honest neutrality, *Valley Mould etc.* v. *National Labor Relations Board*, 116 F. (2) 760, 764. Even slight suggestions as to the employer's choice between unions may have telling effects, *International Association of Machinists etc.* v. *National Labor Relations Board*, 311 U. S. 72. The conduct of the company fell far short of the required standard. Here there was open and known hostility to one union and clear discrimination against it. *International Association of Machinists etc.* v. *National Labor Relations Board*, *supra*, 78. The company's officials exerted great efforts to sustain, and urged its employees to support, the Independent; it vilified leaders of the A. F. of L. union, disparaged that union as "no good," and attempted to bolster up the Independent as a buffer against the A. F. of L.—all these tactics indicating a design to strengthen the Independent. Certainly such actions were not conducive of the neutrality and impartiality required by the Act. In our opinion it constituted a violation of § 8(1)(2) of the Act. *Heinz Co.* v. *National Labor Relations Board*, 311 U. S. 514.

[fol. 23] The company also argues that its conduct was innocuous, that there was no domination, and that such statements as were made were "utterly ineffective," that not one of the employees had "joined the Independent because of any such statements or had refrained from joining, or had withdrawn from Local 22574." It will be enough to say that it is not necessary that the coercive conduct had its intended or desired effect, *National Labor Relations Board* v. *Link-Belt Co.*, 311 U. S. 584. It is only necessary to show that the employer interfered, restrained, or coerced. *Rapid Roller Co.* v. *National Labor Relations Board*, 126 F. (2) 452, 457.

Independent contends that because the trial examiner refused to permit individual members of the Independent to testify with respect to the reasons why and the circumstances under which they had joined, it was denied a fair hearing. The argument is that such testimony was material and tended to prove that these employees had joined the Independent of their own free will, and to disprove interference by the company.

To be sure, as a general rule, findings cannot be said to have been fairly reached unless material evidence which might impeach, as well as that which will support, the Board's findings is heard and weighed, *National Labor Relations Board* v. *Indiana and Michigan, etc.*, Supreme Court, January 18, 1943. Uncontradicted testimony of a large number of employees to the effect that they were free from coercion and under no sense of constraint cannot avail the Independent, *Bethlehem etc.* v. *National Labor Relations Board*, 114 F. (2) 930, 937, and *American Enka Corp.* v. *National Labor Relations Board*, 119 F. (2) 60, 62, and a showing of non-coercion in one instance does not disprove an affirmative showing of coercion in another instance, *United States* v. *General Motors Corp.*, 121 F. (2) 376, 405. The recognition of constraint calls for a high degree of introspective perception, *Bethlehem Shipbuilding* case, *supra*, 937, and it would be a rare case where the finders of fact could probe the precise factors of motivation underlying each employee's choice. Normally, the conclusion that the employees' choice was restrained by the employer's interference must of necessity be based on the existence of conditions or circumstances which the employer created or for which he was fairly responsible, and [fol. 24] as a result of which it may reasonably be inferred

that the employees did not have that complete and unfettered freedom of choice which the Act contemplates. *National Labor Relations Board* v. *Link-Belt Co.*, 311 U. S. 584, 588.

In the instant case, the record discloses that the examiner permitted Independent to adduce the testimony of witnesses who had participated in its organization as to their reasons for joining, but that he refused to receive the testimony of several thousand employees as to their reasons for joining the Independent after its formation.

The Board found as a fact that the company had interfered with the formation of the Independent, basing its findings upon the evidence earlier set forth in this opinion disclosing favors granted by the company to the Independent, and upon the evidence showing the unswerving purpose of the company to repel outside unions. Under such circumstances, the rejected testimony being cumulative and when viewed against the cogent, specific evidence of the company's interference, we cannot say that there was an abuse of discretion and that the Independent had not received a fair hearing.

The Independent next contends that there is no substantial evidence justifying its disestablishment. We have been told frequently that if the findings of the Board are supported by substantial evidence, they are conclusive, and the Supreme Court has been insistent that the admonition be strictly observed, *National Labor Relations Board* v. *Indiana & Michigan etc., supra.* We have already observed that the facts set out above furnish substantial evidence for the conclusion that the company had interfered with its employees in the exercise of their rights and that it had interfered with the formation of the Independent. Such evidence justified the Board's order of disestablishment.

We now pass to the discharge of William Elliott, who entered the employ of the company in 1925, his last period of employment continuing from 1930 until July 25, 1941, when he was discharged, as claimed by the company, because he was a "disgruntled, dissatisfied employee, highly critical of the management and everything that the management did in running the business, and one who did not hesitate to express his feelings openly * * *, not only to his superior officers, but to his fellow employees."

[fol. 25] The record discloses that during the period of his employment, Elliott was a good workman. In 1941 he became the representative of the Independent and in the spring of that year, when the American Federation of Labor was waging its campaign, he was chided by Superintendent Day for not being more aggressive in discharging his duties as such representative. Day testified that part of the reason for discharging Elliott was his failure to represent the Independent in a manner satisfactory to the company. Elliott resigned from the Independent and in July joined the A. F. of L. July 23, 1941, he was elected financial secretary of Local 333, and his election immediately became known to the supervisors. He was discharged July 25. The Board found that the company knew and accepted Elliott as an outspoken and critical employee, and had expressed no disapproval of his critical attitude until he abandoned the Independent and became active in Local 333; that Elliott's failure to act as the Independent's representative was a factor motivating his discharge; and that Elliott's critical attitude was used as a pretext to justify his discharge. The evidence supports these findings. They are binding upon this court.

Finally, the company contends that the order is illegal. The decision of the Board provides that nothing in the order shall be taken to require the company "to vary those wage, hours, and other substantive features of its relations with the employees themselves, which the respondent [company] has established in the performance of such agreements." We think that paragraphs 1(f) requiring the company to cease and desist from "in any other manner" interfering with the exercise by its employees of the rights guaranteed them by § 7 of the Act, 1(a) directing the company to cease giving effect to the individual contracts (without prejudice to the assertion by the employees of any legal rights they may have acquired under such contracts), and 2(d) instructing the company to notify its employees that it will not enforce the contracts or in the future require such contracts to be executed, are in conformity with the orders approved in *National Labor Relations Board* v. *Express Co.*, 312 U. S. 426, 438, and *National Licorice Co.* v. *National Labor Relations Board*, 309 U. S. 350, 364, 367.

We conclude the order is legal; consequently, the peti-
[fol. 26] tion to set aside the Board's order will be denied, and the request for its enforcement will be granted.

It is so Ordered.

A true Copy: Teste:

—— ——, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

[fol. 27] And afterwards, to-wit: On the nineteenth day of March, 1943, there was filed in the office of the Clerk of this Court, Petitioners Motion to Modify Opinion, which said Motion is in the words and figures following, to-wit:

[fol. 28] In the United States Circuit Court of Appeals for the Seventh Circuit, October Term, 1942, January Session, 1943

No. 8142, No. 8155

Western Cartridge Company, a Corporation, Petitioner,

vs.

National Labor Relations Board and American Federation of Labor and Its Affiliated Organizations, Respondents

Western Cartridge Employees' Independent Union, Etc., Petitioner,

vs.

National Labor Relations Board, American Federation of Labor and Its Affiliated Organizations, Respondents

Petitions to Review and Set Aside, and on Request for Enforcement of, an Order of the National Labor Relations Board

Petitioner Western Cartridge Company's Motion to Modify Opinion

Comes now petitioner Western Cartridge Company, and moves the Court to modify its opinion filed in the above

entitled cause on March 1, 1943, in the following respects and for the following reasons, to-wit:

By clarifying the statement contained on page 10, lines 29 to 42, that Paragraphs

"1 (a) directing the company to cease giving effect to the individual contracts (without prejudice to the assertion by the employees of any legal rights they may have acquired under such contracts), and 2 (d) instructing the company to notify its employees that it will not enforce the contracts [fol. 29] * * * are in conformity with the orders approved in National Labor Relations Board v. Express Co., 312 U. S. 426, 438, and National Licorice Co. v. National Labor Relations Board, 309 U. S. 350, 364, 367"

and the statement contained on page 11 that

"the request for its (the Board's order) enforcement will be granted."

This language of the Court, as well as the draft of the proposed decree which has been submitted by the Board, leave the petitioner uncertain as to exactly what it is directed to do or to refrain from doing in connection with the discontinuance of the individual contracts. It should be borne in mind that these individual contracts provide not only for a savings plan, which includes the payment by the company to the employees of six per cent interest on their savings, but also for the payment of a cash bonus upon certain terms and conditions therein set forth.

The Board's order and the proposed decree direct the company to "Cease and desist from: (a) Giving effect to its individual contracts of employment with employees". The proposed decree adds to this direction the qualification "(without prejudice to the assertion by the employees of any legal rights they may have acquired under such contracts)". The Board's order and proposed decree also direct the company to give separate written notice to each of its employees who has signed such an individual contract of employment "that it will not in any manner enforce or attempt to enforce the contract * * * and that discontinuance of the contract is without prejudice to the assertion of any legal rights the employee may have acquired under it;".

It would appear that the language used by the Court in its opinion and by the Board in its order and draft of proposed decree is susceptible to any one of the three following interpretations:

[fol. 30] (1) That the company should not give or offer to give to any employee now holding an individual contract any accrued interest on savings or any accrued bonus;

(2) That the company should give to each employee now holding an individual contract interest accrued to the effective date of the order, and any bonus which may have accrued up to the effective date of the order; or

(3) That the company should permit employees now holding such contracts to continue their savings plans in effect, and, at the expiration of the term of each contract, if the employee has complied with the terms thereof, pay him the accrued savings, interest and bonus as therein provided.

In view of the fact that the adoption by the petitioner of any one of the above possible interpretations might subject it to contempt of Court proceedings, petitioner requests the Court to modify and clarify its opinion, and to so draft any decree which may be entered pursuant to said opinion, as to eliminate any possible ambiguity, and to make it clear what procedure petitioner should follow with respect to the savings and bonus plans under the individual contracts now in effect.

Respectfully submitted, R. H. McRoberts, 1630 Boatmen's Bank Bldg., St. Louis, Missouri, Attorney for Petitioner Western Cartridge Company.

Bryan, Williams, Cave & McPheeters, 1630 Boatmen's Bank Building, St. Louis, Missouri, Of Counsel.

March 15th, 1943.

[fol. 31] And afterwards, to-wit: On the thirtieth day of April, 1943, there was filed in the office of the Clerk of this Court, a Motion for Stay of Execution and Enforcement, which said Motion is in the words and figures following, to-wit:

[fol. 32] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 8142

WESTERN CARTRIDGE COMPANY, a Corporation, Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD and AMERICAN FEDERATION OF LABOR and ITS AFFILIATED ORGANIZATIONS, Respondents.

No. 8155

WESTERN CARTRIDGE EMPLOYEES' INDEPENDENT UNION, Etc., Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD and AMERICAN FEDERATION OF LABOR and ITS AFFILIATED ORGANIZATIONS, Respondents

On Petitions to Review and Set Aside, and on Request for Enforcement of, an Order of the National Labor Relations Board

MOTION FOR STAY OF EXECUTION AND ENFORCEMENT

Comes now Western Cartridge Company, one of the petitioners in the above consolidated cause, and respectfully shows to this Honorable Court that it intends to and will file in the Supreme Court of the United States a petition for a writ of certiorari to review the opinion and decision rendered by this Honorable Court in the above entitled cause on March 1, 1943, and the decree pursuant thereto made and entered herein on April 14, 1943.

Wherefore, the petitioner Western Cartridge Company prays that this Court may stay the execution and enforcement of such opinion, decision and decree, and the issuance of the mandate pursuant thereto, for a reasonable time, pre-

ferably not less than sixty (60) days, within which to allow the petitioner to file in the Supreme Court of the United States such petition for a writ of certiorari.

R. H. McRoberts, 1630 Boatmen's Bank Building, St. Louis, Missouri, Attorney for Petitioner Western Cartridge Company.

Bryan, Williams, Cave & McPheeters, 1630 Boatmen's Bank Building, St. Louis, Missouri, Of Counsel.

[fol. 33] R. H. McRoberts, attorney for Western Cartridge Company, one of the petitioners in the above enttiled cause, hereby certifies that he has been directed by his client, Western Cartridge Company, to take all necessary steps to obtain a review by the Supreme Court of the United States of the opinion and decision rendered by this Honorable Court in the above cause on March 1, 1943, and the decree made and entered therein on April 14, 1943; that pursuant thereto he will file in the Supreme Court of the United States a petition for a writ of certiorari to review the said opinion, decision and decree of this Honorable Court; that said proceedings are and will be taken in good faith in the honest belief that the aforesaid opinion, decision and decree of this Court are erroneous, and because the petitioner is aggrieved by the said opinion, decision and decree; and that the aforesaid application to this Court for stay of execution and enforcement and to withhold issuance of its mandate is not filed, and the petition for a writ of certiorari which will be filed in the Supreme Court of the United States will not be filed, for purposes of delay.

R. H. McRoberts, Attorney for Petitioner, Western Cartridge Company.

[fol. 34] And afterwards, to-wit, on the 14th day of April, 1943, the following further proceedings were had and entered of record, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS,
FOR THE SEVENTH CIRCUIT

October Term, 1942

No. 8142

WESTERN CARTRIDGE COMPANY, a Corporation, Petitioner

vs.

NATIONAL LABOR RELATIONS BOARD and AMERICAN FEDERATION OF LABOR and Its Affiliated Organizations, Respondents

No. 8155

WESTERN CARTRIDGE EMPLOYEES' INDEPENDENT UNION, etc., Petitioner

vs.

NATIONAL LABOR RELATIONS BOARD, AMERICAN FEDERATION OF LABOR and Its Affiliated Organizations, Respdndents

On Petitions to Review and Set Aside, and On Request for Enforcement of, An Order of the National Labor Relations Board

Decree

This cause having come on to be heard upon separate petitions to review and set aside an order of the National Labor Relations Board against Western Cartridge Company, filed respectively on October 20, 1942, and November 18, 1942; and upon an Answer to said petitions filed by the Board on December 4, 1942, requesting this Court to enforce its order; and the Court on March 1, 1943, having rendered its opinion with respect thereto, accordingly, in conformity therewith,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Western Cartridge Company, its officers and agents, shall:

1. Cease and desist from:

(a) Giving effect to its individual contracts of employment with employees (without prejudice to the assertion by

the employees of any legal rights they may have acquired [fol. 35] under such contracts), or to any modification, continuation, extension, or renewal thereof, and from requesting its employees to enter into any similar contracts of employment;

(b) Dominating or interfering with the administration of Western Cartridge Employees Independent Union or with the formation or administration of any other labor organization of its employees, and from contributing support to Western Cartridge Employees Independent Union or to any other labor organization of its employees;

(c) Recognizing Western Cartridge Employees Independent Union as the representative of any of its employees for the purpose of dealing with it concerning grievances, labor disputes, rates of pay, wages, hours of employment, or other conditions of employment;

(d) Giving effect to its agreements of August 12, 1937, March 18, 1941, and June 4, 1941, or to any other contracts or agreements it may have entered into with Western Cartridge Employees Independent Union in respect to rates of pay, wages, hours of employment, or other conditions of employment;

(e) Discouraging membership in International Molders and Foundry Workers Union of North America, Local No. 333, affiliated with the American Federation of Labor, or in any other labor organization of its employees, by discriminating in regard to the hire or tenure of employment or any term or condition of employment of any of its employees;

(f) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

[fol. 36] 2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act.

(a) Withdraw all recognition from Western Cartridge Employees Independent Union as the representative of any of its employees for the purpose of dealing with it con-

cerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and completely disestablish Western Cartridge Employees Independent Union as such representative;

(b) Offer William Elliott immediate and full reinstatement to his former or a substantially equivalent position, without prejudice to his seniority and other rights and privileges;

(c) Make whole William Elliott for any loss of pay he may have suffered by reason of the discrimination against him by payment to him of a sum of money equal to the amount he would normally have earned as wages from July 25, 1941, the date of his discharge, to the date of an offer of reinstatement which conforms to the requirements of Section 2 (b) of this Decree, less his net earnings during such period.

(d) Give separate written notice to each if its employees who has signed an individual contract of employment, or any modification, continuation, extension, or renewal thereof, that it will not in any manner enforce or attempt to enforce the contract, that the employee is not required or expected because of the contract to deal individually with it or to relinquish in any manner his right to engage in concerted activity, and that discontinuance of the contract is without prejudice to the assertion of any legal rights the employee may have acquired under it;

(e) Post immediately in conspicuous places throughout its plant at East Alton, Illinois, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that it will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) to (f) of this Decree; (2) that [fol. 37] it will take the affirmative action set forth in paragraphs 2(a) to (d) of this Decree; and (3) that its employees are free to become or remain members of Chemical Workers Local Union No. 22574, or International Molders and Foundry Workers Union of North America, Local No. 333, both affiliated with the American Federation of Labor, and that it will not discriminate against any employee because of membership in, or activity on behalf of, said organizations;

(f) Notify the Regional Director for the Fourteenth Region in writing within ten (10) days from the date of this Decree what steps it has taken to comply herewith.

Evan A. Evans, Judge, United States Circuit Court of Appeals for the Seventh Circuit; Otto Kerner, Judge, United States Circuit Court of Appeals for the Seventh Circuit; Sherman Minton, Judge, United States Circuit Court of Appeals for the Seventh Circuit.

Apr. 14, 1943.

[fol. 38] And on the same day, to-wit: On the thirtieth day of April, 1943, the following further proceedings were had and entered of record, to-wit:

Friday, April 30, 1943.

Court met pursuant to adjournment.
Before Hon. Otto Kerner, Circuit Judge.

8142

Western Cartridge Company, a Corporation, Petitioner,

vs.

National Labor Relations Board and American Federation of Labor and Its Affiliated Organizations, Respondents.

8155

Western Cartridge Employees' Independent Union, a Voluntary Association and Trade Uunon, Petitioner,

vs.

Naoinal Laeor Relations Board and American Federation of Labor and Its Affiliated Organizations, Respondents.

Petitions to Review and set aside, and on request for enforcement of, an Order of the National Labor Relations Board.

On motion of counsel for Western Cartridge Company, it is ordered that the execution and enforcement of the de-

cree herein be, and it is hereby, stayed for a period of sixty days.

[fol. 39] And afterwards, to-wit: On the seventh day of July, 1943, there was filed in the office of the Clerk of this Court, a Designation for Record on Petition for Writ of Certiorari, which said designation is in the words and figures following, to-wit:

[fol. 40] IN THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE SEVENTH CIRCUIT

No. 8142

WESTERN CARTRIDGE COMPANY, a corporation, Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD and AMERICAN FEDERATION OF LABOR and Its Affiliated Organizations, Respondents.

No. 8155

WESTERN CARTRIDGE EMPLOYEES' INDEPENDENT UNION, *Etc.*, Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD, AMERICAN FEDERATION OF LABOR and Its Affiliated Organizations, Respondents

PRAECIPE FOR RECORD

To Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit:

Please prepare certified transcript of the record in the above entitled cause for filing in the United States Supreme Court, pursuant to Supreme Court Rule 38, including

1. Printed Supplement to Brief of Petitioner Western Cartridge Company.

2. Printed Appendix to Respondents' Brief.

3. Entire proceedings in the United States Circuit Court of Appeals for the Seventh Circuit, including, but without limitation—

(a) Petition for Review and the Setting Aside of an Order of the National Labor Relations Board of Western Cartridge Company, No. 8142.

(b) Petition to Review and Set Aside an Order of the National Labor Relations Board of Western Cartridge Employees' Independent Union, No. 8155.

[fol. 41] (c) Answer of National Labor Relations Board and Request for Enforcement (Case No. 8142).

(d) Answer of National Labor Relations Board (Case No. 8155).

(e) Motion for Consolidation.

(f) Order of Consolidation.

(g) Opinion of the Court dated March 1, 1943.

(h) Petitioner Western Cartridge Company's Motion to Modify Opinion.

(i) Decree entered April 14, 1943.

(j.) Motion for Stay of Execution and Enforcement.

(k) Order Staying Execution.

R. H. McRoberts 1630 Boatmen's Bank Building, St. Louis, Missouri. Attorney for Petitioner Western Cartridge Company.

Bryan, Williams, Cave & McPheeters, 1630 Boatmen's Bank Building, St. Louis, Missouri. Of Counsel.

[fol. 42] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing typewritten pages contain a true copy of the proceedings had and papers filed as called for by the designation on petition for writ of Certiorari, filed on: July 7, 1943, in:

Western Cartridge Company, a Corporation, Petitioner,

8142 vs.

National Labor Relations Board and American Federation of Labor and its Affiliated Organizations, Respondents,

Western Cartridge Employees' Independent Union, Etc., Petitioners,

8155 vs.

National Labor Relations Board, American Federation of Labor and its Affiliated Organizations, Respondents, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 8th day of July A. D. 1943.

Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit. (Seal.)

No. 163

Office - Supreme Court, U. S.
FILED
JUL 14 1943
CHARLES ELMORE CROPLEY
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United States Circuit Court of Appeals,

SEVENTH CIRCUIT.

WESTERN CARTRIDGE COMPANY,
a Corporation,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD and AMERICAN FEDERATION OF LABOR and Its Affiliated Organizations,
Respondents.

No. 8142
Civil.

PETITION

For a Review and the Setting Aside of an Order of the National Labor Relations Board.

R. H. McROBERTS,
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Attorney for Petitioner.

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United States Circuit Court of Appeals,

SEVENTH CIRCUIT.

WESTERN CARTRIDGE COMPANY, a Corporation, Petitioner, vs. NATIONAL LABOR RELATIONS BOARD and AMERICAN FEDERATION OF LABOR and Its Affiliated Organizations, Respondents.	No. ....., Civil.

PETITION

For a Review and the Setting Aside of an Order of the National Labor Relations Board.

To the Honorable Judges of the United States Circuit Court of Appeals for the Seventh Circuit:

Now comes Western Cartridge Company, a corporation, and prays the Court to review and set aside the decision and order of the National Labor Relations Board made and entered on the 16th day of September, 1942, in Case No. C-2123, then pending before said Board, entitled, "In the Matter of Western Cartridge Company, a corporation, and American Federation of Labor and its Affiliated Organizations."

STATEMENT OF THE NATURE OF THE PROCEEDINGS.

The proceedings originated in a second amended charge filed on November 19, 1941, by the American Federation of Labor and its affiliated organizations with the National Labor Relations Board, upon which the Regional Director for the Fourteenth Region (St. Louis, Missouri) issued its complaint dated November 19, 1941, against Western Cartridge Company, alleging that the said company had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449. With respect to the alleged unfair labor practices, the complaint alleged, in substance:

(1) That the said company, on or about June 4, 1937, instigated the formation of a labor organization known as the Western Cartridge Employees Independent Union, and that it thereafter dominated and interfered with the administration of said organization, contributed financial and other support to it, and recognized the same as the exclusive bargaining representative of the company's employees in written contracts dated August 12, 1937, and June 4, 1941; and

(2) That the company discouraged membership in the American Federation of Labor and encouraged membership in the Western Cartridge Employees Independent Union by discharging and transferring certain employees; and

(3) That, by the foregoing acts, by attempting to instigate the formation of the Western Cartridge Employees Association, by attempting to dissuade its employees from becoming or remaining members of the American Federa-

tion of Labor, by questioning its employees concerning their union affiliation, by soliciting and obtaining from its employees since July 5, 1935, individual employment contracts, including, among other things, limitations upon their right to strike and to engage in other concerted activities, and by other acts, the company interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the said Act.

Thereafter, answers having been filed by the company and the Western Cartridge Employees Independent Union, pursuant to notice, a hearing was held at East Alton, Illinois, from December 8, 1941, to January 9, 1942, before a Trial Examiner designated by the Chief Trial Examiner of the National Labor Relations Board. On February 25, 1942, the Trial Examiner filed his Intermediate Report, copies of which were served upon all parties, and on April 7, 1942, the company and Western Cartridge Employees Independent Union filed exceptions to the Intermediate Report. Thereafter, pursuant to notice, and at the request of the company and the Western Cartridge Employees Independent Union, a hearing was held before the National Labor Relations Board at Washington, D. C., on June 11, 1942, for the purpose of oral argument, at which the company and the Western Cartridge Employees Independent Union and the American Federation of Labor were represented by counsel and participated in the argument. Thereupon, and on the 16th day of September, 1942, the National Labor Relations Board made and entered its decision and order making certain findings of fact, conclusions of law and an order, all as more specifically therein set forth and contained.

VENUE.

Petitioner, Western Cartridge Company, a corporation, is a Delaware corporation duly licensed to do business in the State of Illinois, with its principal office and place of

business in the City of East Alton, Illinois, and transacts business in the State of Illinois. The unfair labor practices alleged to have been committed by the Western Cartridge Company in the said complaint were alleged to have been committed in the State of Illinois. The Statute upon which venue is based is Section 10 (f) of the National Labor Relations Act, being Act of July 5, 1935, c. 372, 49 Stat. 449-457; 29 U. S. Code, Secs. 151-166; Public No. 198, 74th Congress.

RELIEF PRAYED.

The relief prayed for is that the said decision and order of the National Labor Relations Board be reviewed and set aside.

STATEMENT OF POINTS.

The points to be relied upon by the petitioner for the review and setting aside of the said decision and order are as follows:

1. The Board erred in affirming the ruling of the Trial Examiner denying a motion by the petitioner to make the complaint more definite by specifying the names of the organizations affiliated with the A. F. of L., membership in which the petitioner was alleged to have discouraged.

2. The Board erred in affirming the rulings of the Trial Examiner on the other motions and on the admissibility of evidence during the course of the hearing.

3. The Board erred in denying the motion of petitioner to reopen the record for the purpose of receiving additional evidence of benefits alleged to have been gained by the employees of the petitioner as the result of negotiations between the Western Cartridge Employees Independent Union and the petitioner.

4. The Board erred in finding that petitioner's employees were urged to execute the individual contracts of employment.

5. The Board erred in finding that the form of individual employment contract alleged to have been urged by the petitioner on its employees was and is, by its terms, an interference with the employees' right to engage in concerted activity as guaranteed in the Act.

6. The Board erred in finding that the petitioner's reintroduction of the individual employment contracts in 1933, and its efforts thereafter to have employees sign them, were due to a realization on its part of the restrictive effect of the contracts on the organizational activities of the employees, and to a desire to accomplish precisely that restrictive effect, and that it was the purpose and the effect of the contracts since their reintroduction to forestall union activity among petitioner's employees, and to create a permanent barrier to union organization among them.

7. The Board erred in finding that petitioner, by urging and persuading its employees to sign the individual contracts of employment, has, since July 5, 1935, interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

8. The Board erred in finding that Olin made it clear to Sullivan that, before recognizing the Independent as a bargaining representative, the petitioner would have to be assured that the Independent's constitution and by-laws would not affect the individual contractual relationship existing between the petitioner and the bulk of its employees.

9. The Board erred in finding that at all times since its inception in 1937, the Independent, without objection by the petitioner, has engaged in organizational activities on company time and property, without finding, at the same time, that the same privilege has been accorded by the pe-

titioner to the various American Federation of Labor unions, as well as District 50 of the United Mine Workers of America, then affiliated with the C. I. O.

10. The Board erred in finding Francis Bunzy to be a credible witness.

11. The Board erred in finding that the Independent presented its declining membership problem to petitioner and asked for petitioner's assistance, and that petitioner's general manager Bassett made no definite commitment, but said that he would keep the matter in mind.

12. The Board erred in finding that during the latter part of December, 1940, Fred Olds, an organizer for the American Federation of Labor, made his first contact with employees of the petitioner.

13. The Board erred in finding that petitioner's General Manager Bassett stated to representatives of the Independent that if a notice of the granting of a 2 per cent wage bonus was posted in the plant giving the Independent credit for the increase it would bring the Independent's membership up, showing that the Independent was trying to do something for its members, and that such suggestion was accepted.

14. The Board erred in finding that the 2 per cent bonus increase was given about the same time that the American Federation of Labor appeared on the scene.

15. The Board erred in finding that the petitioner assisted and encouraged the Independent by arranging for it to take credit for obtaining the bonus increase.

16. The Board erred in finding that in the middle of January, 1941, the American Federation of Labor began to intensify its membership campaign among petitioner's employees.

17. The Board erred in finding that shortly after Local 22574 had demanded bargaining rights for employees in

the Smokeless Powder Division, and when it appeared likely that the A. F. of L. would extend its campaign to the Western side, the petitioner took further steps to strengthen and support the Independent.

18. The Board erred in finding that petitioner encouraged the Independent on the Western side and accompanied such encouragement by the discouragement of Local 22574 in the Smokeless Powder Division, for which the Independent was the recognized bargaining representative.

19. The Board erred in finding that during the first six months of 1941, and especially after Local 22574 had demanded bargaining rights, the petitioner repeatedly manifested its hostility to the A. F. of L.

20. The Board erred in crediting the testimony of each of the witnesses offered by the Board with respect to statements attributed to petitioner's supervisory employees, and in failing to give credit to the testimony offered by any of such supervisory employees in denial of the statements attributed to them.

21. The Board erred in finding that notwithstanding the result of the election conducted by the Board on May 26, 1941, in petitioner's Smokeless Powder Division, the petitioner continued to deduct Independent membership dues from the wages of employees in the Smokeless Powder Division.

22. The Board erred in finding that at about August 5, 1941, the Independent revived its campaign on the Western side and openly solicited membership applications on company property and time, without at the same time finding that such privilege was not denied to the various American Federation of Labor unions or District 50 of the United Mine Workers of America, affiliated with the C. I. O.

23. The Board erred in concluding that in 1933, prior to the effective date of the Act, the petitioner successfully

smothered the first efforts of its employees to seek self-organization.

24. The Board erred in concluding that the petitioner has, at all times since 1933, including the period following the effective date of the Act, made it clear to its employees that all of them were expected to sign the individual employment contracts.

25. The Board erred in concluding that for approximately four years the individual employment contracts produced the desired result.

26. The Board erred in concluding that general manager Bassett approved the idea of the formation of the Independent and that such approval spurred such formation.

27. The Board erred in finding that foreman Robertson's statement to Bunzy and Bassett's assurance to Taylor made it clear that the petitioner was in favor of the Independent and welcomed its formation.

28. The Board erred in concluding that the petitioner favored the Independent because it would serve as a means of combating organization by an outside union and perpetuating the individual contract system.

29. The Board erred in concluding that the petitioner summarily rejected the proposal of the Independent for a working agreement and substituted its own ideas on bargaining in the form of the so-called basic agreement.

30. The Board erred in concluding that bargaining pursuant to the terms of the basic agreement was not collective bargaining within the meaning of the Act.

31. The Board erred in concluding that it is clear from the record that the petitioner made acceptance of the individual contracts a condition precedent to bargaining with the Independent.

32. The Board erred in concluding that the condition

(acceptance of the individual contracts) was merely accepted by the Independent, and its acquiescence demonstrated its complete subservience to the petitioner and its inability to act as a true bargaining representative for the employees.

33. The Board erred in finding that the Independent in effect relinquished the right to strike, endorsed the individual contracts, and acknowledged that the contracts were paramount to the guarantee of collective bargaining contained in the Act.

34. The Board erred in concluding that a bona fide labor organization, not dominated by the petitioner, would not have thus joined with the petitioner in the execution of the basic agreement.

35. The Board erred in concluding that the petitioner's domination of the Independent is indicated by the fact that the petitioner failed for almost four years to conclude a formal working agreement with the Independent covering wages, hours and conditions of employment.

36. The Board erred in concluding that the petitioner gave the Independent the support it believed necessary to protect the Independent's position.

37. The Board erred in concluding that in the latter part of December, 1940, when the A. F. of L. was making plans to organize the plant, petitioner arranged for the Independent's receiving credit for obtaining a bonus increase.

38. The Board erred in concluding that in the early part of 1941 the petitioner sought to prevent the spread of the A. F. of L's influence to the Western side by giving the Independent working agreements covering the brass mill and the casting shop.

39. The Board erred in concluding that while the petitioner was assisting the Independent, it discouraged em-

ployees in the Smokeless Powder Division who were desirous of being represented by Local 22574, by displaying its hostility toward that union, by disparaging its leadership, by urging the withdrawal of its adherents, and by advising employees to vote against Local 22574 in the Board election of May 26, 1941.

40. The Board erred in finding and concluding that by its entire course of conduct the petitioner encouraged, supported and maintained the Independent in order to impede and, if possible, prevent genuine self-organization of the petitioner's employees, and that such an organization is incapable of functioning as a true collective bargaining representative.

41. The Board erred in finding that the petitioner dominated and interfered with the formation and administration of the Independent and contributed support to it, and thereby interfered with, restrained and coerced its employees in the exercise of the rights guaranteed by Section 7 of the Act.

42. The Board erred in finding that Superintendent Day made the statements attributed to him by Elliott.

43. The Board erred in failing to find that Elliott was responsible for slowing up production and for the poor quality of work in the casting shop.

44. The Board erred in finding that there was no showing made in the record that Elliott's attitude toward and remarks about the petitioner and working conditions were in fact the cause of other employees' bad work, or that there was any reasonable basis for the petitioner believing so, and in finding that it is as reasonable to attribute the alleged decrease in production to the widespread dissatisfaction with working conditions as to Elliott's attitude and remarks.

45. The Board erred in finding that Elliott's critical attitude was used by the petitioner as a pretext to justify his discharge.

46. The Board erred in finding that Elliott was discharged on July 25, 1941, because of his withdrawal from the Independent and because of his membership in and activity on behalf of Local 333.

47. The Board erred in finding that by thus discharging Elliott the petitioner discriminated with regard to his hire and tenure of employment, and thereby discouraged membership in Local 333, and interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

48. The Board erred in making the Conclusions of Law numbers 2 to 6, inclusive, and each of them, set forth and contained in said Decision and Order.

49. The Board erred in making and entering the cease-and-desist order contained in Paragraph 1, subparagraphs (a) to (f), inclusive, of the Order, set forth and contained in said Decision and Order.

50. The Board erred in making and entering the order directing affirmative action contained in Paragraph 2, subparagraphs (a) to (f), inclusive, of the Order, set forth and contained in said Decision and Order.

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No 163 (B)

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United States Circuit Court of Appeals,

SEVENTH CIRCUIT.

WESTERN CARTRIDGE EMPLOYEES' INDEPENDENT UNION, a Voluntary Association and Trade Union,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD, AMERICAN FEDERATION OF LABOR and Its Affiliated Organizations,
Respondents.

No. 8155
Civil.

PETITION TO REVIEW AND SET ASIDE AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.

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United States Circuit Court of Appeals,

SEVENTH CIRCUIT.

WESTERN CARTRIDGE EMPLOYEES' INDEPENDENT UNION, a Voluntary Association and Trade Union,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD, AMERICAN FEDERATION OF LABOR and Its Affiliated Organizations,
Respondents.

No. .....
Civil.

PETITION TO REVIEW AND SET ASIDE AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.

To the Honorable Judges of the United States Circuit Court of Appeals, Seventh Circuit:

Comes now Western Cartridge Employees' Independent Union, a voluntary, unincorporated association and labor union, and prays the Court to review and set aside a certain decision and order of the National Labor Relations Board entered on September 16, 1942, in case No. C-2123, entitled: "In the Matter of Western Cartridge Company, a Corporation, and American Federation of Labor and its affiliated organizations."

STATEMENT.

On November 19, 1941, a complaint was filed by the American Federation of Labor and its affiliated organizations charging the Western Cartridge Company with violation of certain provisions of the National Labor Relations Act, and on said date the National Labor Relations Board, acting by and through its Regional Director for the Fourteenth Region, issued its complaint against Western Cartridge Company, alleging that said company had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2) and (3), and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, hereinafter called the Act. A copy of the complaint and notice of hearing thereon was served on petitioner, and a hearing was held at East Alton, Illinois, from December 8, 1941, to January 9, 1942, before Horace A. Ruckle, Trial Examiner designated by the Board to conduct such hearing and to report to the Board thereon. The Independent intervened in the proceedings and participated in the hearing. On February 25, 1942, the Trial Examiner filed his intermediate report with the Board, finding that Western Cartridge Company had been guilty of the unfair labor practices charged, and recommended, among other things, that the Independent Union be disestablished as bargaining representative of any of the employees of Western Cartridge Company and that said Company be ordered to withdraw all recognition from the Independent as such representative. And on April 7, 1942, the Independent filed with the Board its exceptions to said report. Thereafter, and on June 11, 1942, at the request of Western Cartridge Company and the Independent Union, a hearing was held by the Board at Washington, D. C., at which hearing counsel for all parties were present and participated in oral argument before the

Board. On September 16, 1942, the Board filed and entered its decision and order in the case.

In connection with its said decision and order, the Board made certain findings of fact and conclusions of law, and made certain orders, which Western Cartridge Employees' Independent Union prays this Honorable Court to review and set aside. The findings, conclusions and orders of which the Independent complains will more specifically appear herein under the Statement of Points Relied Upon.

THE COMPLAINT.

The specific charges concerning which petitioner complains are, in substance, as follows:

(1) That Western Cartridge Company instigated the formation of the Independent Union, and thereafter dominated and controlled said union by interfering with its administration, and furnishing financial support to it;

(2) That Western Cartridge Company recognized the Independent Union as bargaining representative for its production and maintenance employees;

(3) That Western Cartridge Company encouraged its production and maintenance employees to become members of the Independent Union;

(4) That Western Cartridge Company requested and coerced its employees to enter into individual contracts of employment with the Company;

(5) That by the individual contracts of employment Western Cartridge Company limited and restricted the right of its employees to strike, and otherwise interfered with the rights guaranteed its employees in Section 7 of the Act.

JURISDICTION.

Western Cartridge Company is a corporation licensed to do business in the State of Illinois, having its principal office and place of business at East Alton, Illinois. Western Cartridge Employees' Independent Union is a voluntary, unincorporated labor organization, whose membership is made up of production and maintenance employees of said Company. Said Independent Union, petitioner herein, maintains its office at East Alton, Illinois. The unfair labor practices were allegedly committed in the State of Illinois, and the jurisdiction of this Court is invoked under the provisions of Section 10 (f) of the National Labor Relations Act.

STATEMENT OF POINTS RELIED UPON.

(1) The Board erred in failing to notice, or pass upon, the refusal of the Trial Examiner to permit individual members of the Independent Union to testify with respect to the reasons why they joined the Independent, and the circumstances under which they joined it.

(2) The Board erred in failing to notice, or pass upon, the refusal of the Trial Examiner to permit individual members of the Independent Union to testify that they were not solicited by any foreman, superintendent, or by any official or other representative of Western Cartridge Company to become members of the Independent, and that no foreman, superintendent, official or other representative of the Company had ever at any time asked, suggested or urged them to join the Independent, or attempted in any way to direct, control or affect their actions as members of the Independent.

(3) The Board erred in failing to find and decide that the Trial Examiner had erred in refusing to receive the

testimony of the individual members of the Independent with respect to the reasons why and the circumstances under which they joined the Independent, and in refusing to find and decide that the Trial Examiner had erred in refusing to permit the members of the Independent to testify that no foreman, superintendent, official or other representative of the Company had at any time asked, suggested or urged them to join the Independent, or had ever attempted in any way to direct, control or affect their actions as members of the Independent Union.

(4) The Board erred in not ordering the case reopened for the purpose of admitting and receiving testimony of the individual members of the Independent Union with respect to the reasons why and the circumstances under which they had joined the Independent, and for the purpose of admitting and receiving the testimony of the individual members of the Independent that no foreman, superintendent, official or other representative of the Company had at any time asked, suggested or urged them to join the Independent, or had attempted in any way to direct, control or affect their actions as members of the Independent.

(5) The Board erred in finding and deciding that the formation of the Independent Union was instigated by Western Cartridge Company.

(6) The Board erred in finding and deciding that Western Cartridge Company had dominated and controlled the Independent Union since its formation, and had interfered with the administration of the affairs of the Independent.

(7) The Board erred in finding and deciding that the production and maintenance employees of Western Cartridge Company, including the members of the Independent Union, were coerced into signing and entering into individual contracts of employment with the Company.

(8) The Board erred in finding and deciding that the individual contracts of employment placed any restrictions on the rights of the production and maintenance employees of Western Cartridge Company, including the members of the Independent Union, to strike, or to engage in any other concerted activity.

(9) The Board erred in finding that the individual contracts entered into between Western Cartridge Company and its production and maintenance employees were in any respect unfair to the employees.

(10) The Board erred in failing and refusing to find that the individual employment contracts entered into between Western Cartridge Company and its production and maintenance employees were desired by the employees, and were beneficial to such employees.

(11) The Board erred in finding and deciding that Western Cartridge Company afforded or furnished financial support to the Independent.

(12) The Board erred in finding and deciding that the terms and conditions of a so-called basic agreement entered into by and between Western Cartridge Company and the Independent Union were dictated by the Company.

(13) The Board erred in finding and deciding that Western Cartridge Company summarily rejected the Independent Union's proposal for a working agreement and substituted its own ideas of bargaining in the form of the so-called basic agreement.

(14) The Board erred in finding and deciding that the individual contracts of employment were illegal; that there was any provision in said individual contracts that in anywise restricted or interfered with the dealings between the Independent Union and the Company.

(15) The Board erred in finding and deciding that there could be no collective bargaining on the part of Western Cartridge Company's employees because of the execution of the individual contracts of employment.

(16) The Board erred in ordering Western Cartridge Company to cease and desist from giving effect to the individual contracts of employment with its production and maintenance employees, or to any modification, continuation, extension, or renewal thereof, and from requesting and permitting its employees to enter into any similar contracts of employment.

(17) The Board erred in ordering Western Cartridge Company to cease and desist from recognizing Western Cartridge Employees' Independent Union as the representative of any of its employees for the purpose of dealing with the Company concerning grievances, labor disputes, rates of pay, hours of employment, or other conditions of employment.

(18) The Board erred in ordering Western Cartridge Company to cease and desist from giving effect to its agreements of August 12, 1937; March 18, 1941, and June 4, 1941, or to any other contracts or agreements it may have entered into with the Independent Union in respect to rates of pay, wages, hours of employment, or other conditions of employment.

(19) The Board erred in ordering Western Cartridge Company to withdraw all recognition from the Independent Union as the representatives of any of the Company's employees for the purpose of dealing with the Company concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and to disestablish Western Cartridge Employees' Independent Union as such representative.

(20) The Board erred in ordering Western Cartridge Company to give separate written notice to each of its employees who has signed an individual contract of employment, or any modification, continuation, extension or renewal thereof, that the Company will not in any manner enforce or attempt to enforce the contract, that the employee is not required or expected because of the contract to deal individually with the Company or to relinquish in any manner his right to engage in concerted activity.

(21) The Board erred in ordering Western Cartridge Company to post throughout its plant at East Alton, Illinois, notices to its employees stating: (1) that the Company will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) to (f) of the order of the Board; (2) that the Company will take the affirmative action set forth in paragraphs 2 (a) to (d) of the order of the Board; and (3) that the Company's employees are free to become or remain members of Chemical Workers Local Union No. 22,574, or International Molders and Foundry Workers Union of North America, Local No. 333, both affiliated with the American Federation of Labor.

(22) The Board erred in not ordering Western Cartridge Company to notify its production and maintenance employees that they are free to become or remain members of Western Cartridge Employees' Independent Union.

In each and every matter above mentioned and in respect of all matters related thereto, the rights of Western Cartridge Employees' Independent Union, and each of its members, under the National Labor Relations Act, and the rights of said Independent Union and each of its members under the Constitution of the United States of America and under the Constitution of the State of Illinois have been ignored, transgressed, set aside, and interfered with.

PRAYER.

For the reasons herein stated, Western Cartridge Employees' Independent Union, petitioner herein, respectfully prays this Honorable Court to review and set aside the said order of the National Labor Relations Board entered on September 16, 1942.

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(4)

Office - Supreme Court, U. S.
JUL 14 1943

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1942.

WESTERN CARTRIDGE COMPANY, a Corporation, Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD and AMERICAN FEDERATION OF LABOR and Its Affiliated Organizations, Respondents.

WESTERN CARTRIDGE EMPLOYEES' INDEPENDENT UNION, etc., Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD, AMERICAN FEDERATION OF LABOR and Its Affiliated Organizations, Respondents.

No. 163

Petitions to Review and Set Aside, and on Request for Enforcement of, an Order of the National Labor Relations Board.

PETITION FOR A WRIT OF CERTIORARI

To the United States Circuit Court of Appeals for the Seventh Circuit

and

SUPPORTING BRIEF.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1942.

WESTERN CARTRIDGE COMPANY, a Corporation, Petitioner, vs. NATIONAL LABOR RELATIONS BOARD and AMERICAN FEDERATION OF LABOR and Its Affiliated Organizations, Respondents. WESTERN CARTRIDGE EMPLOYEES' INDEPENDENT UNION, etc., Petitioner, vs. NATIONAL LABOR RELATIONS BOARD, AMERICAN FEDERATION OF LABOR and Its Affiliated Organizations, Respondents.	No. ..... Petitions to Review and Set Aside, and on Request for Enforcement of, an Order of the National Labor Relations Board.

PETITION FOR A WRIT OF CERTIORARI

To the United States Circuit Court of Appeals for the Seventh Circuit.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Western Cartridge Company, a corporation, respectfully shows:

Your petitioner seeks to review the opinion and decision of the Circuit Court of Appeals for the Seventh Circuit, rendered on March 1, 1943, and the decree of said Court

entered pursuant to said opinion on April 14, 1943, wherein the Court of Appeals denied a petition to set aside an order of the National Labor Relations Board and granted enforcement of such order.

The opinion of the Circuit Court of Appeals is reported in 134 Fed. (2d) 240.

I.

JURISDICTION.

The opinion of the Circuit Court of Appeals was filed on March 1, 1943. The decree of the Circuit Court of Appeals, entered in conformity with said opinion, enforcing compliance with the order of the National Labor Relations Board, was entered on April 14, 1943. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925 [28 U. S. C. A., Sections 347 (a) and 350] and Section 10 (e) of the National Labor Relations Act [29 U. S. C. A., Section 160 (e)].

II.

QUESTIONS PRESENTED.

The following questions are presented for consideration in connection with this petition for a writ of certiorari:

1. Does the National Labor Relations Act preclude the right of individual contract between employer and employee, either prior to or after the selection of representatives for the purpose of collective bargaining, when the contracts (a) contain no provisions repugnant to the National Labor Relations Act, and (b) are not obtained by means of any unfair labor practice?

2. Has the National Labor Relations Board, or the Court of Appeals, power, either prior to or after the selection of representatives for the purpose of collective bargaining, to enjoin an employer from giving effect to individual con-

tracts of employment then in existence (without prejudice to the assertion by the employees of any legal rights they may have acquired under such contracts) when such contracts (a) contain no provisions repugnant to the National Labor Relations Act, and (b) have not been obtained by means of any unfair labor practice?

3. Has the National Labor Relations Board, or the Court of Appeals, power, either prior to or after the selection of representatives for the purpose of collective bargaining, to enjoin in perpetuity an employer from requesting its employees to enter into individual contracts of employment when such contracts (a) contain no provisions repugnant to the National Labor Relations Act, and (b) have not been obtained by means of any unfair labor practice?

4. Did the Trial Examiner of the National Labor Relations Board err in refusing to admit the testimony of individual members of the Western Cartridge Employees' Independent Union with respect to the reasons why and the circumstances under which they joined said union and the fact that no foreman, supervisor, superintendent, official or other representative of the Company at any time asked, suggested or urged them to join such union or attempted in any way to direct, control, or affect their actions as members of such union?

5. Is the finding of the National Labor Relations Board, upheld by the Circuit Court of Appeals, that the Company interfered with the formation and administration of the Western Cartridge Employees' Independent Union, supported by substantial evidence?

6. Is the finding of the National Labor Relations Board, upheld by the Circuit Court of Appeals, that William Elliott was discharged because he failed to act as the representative of the Western Cartridge Employees' Independent Union, and that his critical attitude was used as a pretext to justify his discharge, supported by substantial evidence?

III.

STATUTE INVOLVED.

The pertinent provisions of the National Labor Relations Act (29 U. S. C. A., Section 151 et seq.) are as follows:

"§ 157. (Sec. 7) Right of employees as to organization, collective bargaining, etc.

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection."

"§ 158. (Sec. 8) Unfair labor practices by employer defined.

"It shall be an unfair labor practice for an employer—

"(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157 of this title. * * *"

"§ 160. (Sec. 10)

* * * * * * *

"(c) The testimony taken by such member, agent or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. Such order may further require such person

to make reports from time to time showing the extent to which it has complied with the order. If upon all the testimony taken the Board shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint."

IV.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

The facts, in so far as they are material to the questions presented, are as follows:

Petitioner, Western Cartridge Company (sometimes hereinafter referred to as the "Company"), operates a plant at East Alton, Illinois, where it is engaged in manufacturing, selling and distributing small arms ammunition, explosives and related products.

Beginning in the year 1914 or 1915 the Company began to use individual employment contracts in its relations with its employees. These individual contracts were used continuously until the year 1921, when, during the depression in the ammunition business following the end of the First World War, they were discontinued. In 1933 the Company revived the use of these individual contracts and they have been used ever since (Supp. p. 519).*

An employee becomes eligible to receive one of these contracts only after first serving a three months probationary period, at which time he is offered a contract designated as an "Original Contract" running for a period of six months. At the expiration of the Original Contract the employee, if retained, is offered a contract designated as an "Extension Agreement," running for a period of one year. Thereafter, as these Extension Agreements expire,

*Citations to the Supplement to Petitioner's Brief will be designated as (Supp. p. ...)

the employee is given an opportunity to renew the contract on the same form (Supp. pp. 273-275, 492-501, 559).

All of the provisions of the Original Contract and of the Extension Agreement material to the present case are identical except the designation of the length of the term. For the convenience of the Court a copy of the Original Contract is set out in full in an appendix to this petition and brief (pp. 31-35). (Both forms may be found in Supp. pp. 563-572.)

The contracts themselves contain no provisions repugnant to the National Labor Relations Act, as will be apparent upon examination.

Although the Board and the American Federation of Labor strenuously urged the proposition that the contracts by their terms impose illegal restraints upon the exercise by the employees of rights guaranteed by the Act, the Circuit Court of Appeals refused to uphold such contention and made no such finding.

Neither the Board nor the Court found that the individual contracts had been obtained by means of any unfair labor practice.

Nearly all of the Company's eligible employees signed such individual contracts. However, a number refused to sign without affecting in any way their status or condition of employment with the Company (Supp. pp. 274-275, 500, 501).

There was no union among the Company's employees from the year 1933 to 1937. In 1937 the C. I. O. held several meetings seeking to organize employees of the Company, and some of the employees signed applications for membership. Following these efforts of the C. I. O. to organize the Company's employees, in the year 1937 a group of the Company's nonsupervisory employees, on their own initiative, decided to form a labor organization of their own. An attorney was employed and the organization was perfected under the name of Western Cartridge Employees'

Independent Union, commonly referred to as the "Independent" (Supp. pp. 316-335). The Trial Examiner found that the Company had not instigated the formation of the Independent. More than 85 per cent of the Company's hourly-paid production and maintenance employees joined the Independent and a demand was made on the Company for recognition (Supp. pp. 250-252, 260, 267-270, 516-517). After demanding and receiving proof of majority representation, the Company recognized the Independent as the sole bargaining agent under the National Labor Relations Act, signing a contract with the Independent on August 12, 1937, known as "The Basic Agreement" (Supp. pp. 553-554).

Following the recognition of the Independent, the Company and the Independent engaged in collective bargaining repeatedly and almost continually from August of 1937 down to December of 1942 with respect to practically every matter which could conceivably be the subject of collective bargaining, including wages, hours and working conditions (Supp. pp. 210-230, 230-248, 252-259). Beginning about the middle of January, 1941, the American Federation of Labor carried on an active organizational campaign which was initially confined to the approximately 600 employees in the Smokeless Powder Division. This campaign was energetic and successful, and by the middle of the year 1941 more than 500 of the employees in the Smokeless Powder Division had become members of Chemical Workers Local Union No. 22574, affiliated with the American Federation of Labor (Supp. p. 68). A contract was signed with Local No. 22574 on August 2, 1941, and a supplement on September 29, 1941. In the meantime, along in the late spring or early summer of 1941, the American Federation of Labor, having completed its organization of the Smokeless Powder Division, extended its activities to the balance of the plant, and began to sign up members principally in the cast shop and brass mill. Pursuant to these activities sev-

eral hundred members were signed up and another A. F. of L. local union was chartered in August of 1941.

Subsequently the American Federation of Labor and Its Affiliated Organizations was certified by the National Labor Relations Board, following an election, as the collective bargaining agent for all of the Company's production and maintenance workers at its East Alton Plant. 11 Labor Relations Reporter 807.

On July 25, 1941, William Elliott, a caster in the cast shop, and a member of Local 333, was discharged.

The complaint charged, inter alia, (a) that the Company "did * * * solicit and obtain from its employees individually signed promises, including among other things limitations on employees' right to strike and engage in other concerted activities," evidently referring to the individual employment contracts, (b) that the Company instigated the formation of the Independent and dominated and interfered with its administration, and (c) that the Company discriminatorily discharged William Elliott.

At the hearing the Trial Examiner refused to admit the testimony of certain members of the Independent with respect to the reasons why and the circumstances under which they joined the said union, and the fact that no foreman, supervisor, superintendent, official or other representative of the Company at any time asked, suggested or urged them to join such union, or attempted in any way to direct, control or affect their actions as members of such union.

The Board found against the Company on each of the three charges above referred to, and affirmed the ruling of the Trial Examiner with respect to the refusal to receive the testimony of individual members of the Independent.

The Court upheld the finding of the Board that by urging its employees to sign the individual contracts after the National Labor Relations Act went into effect the Company had interfered with the employees' right to self-organization, saying:

"The Board found that the effect of the contracts has been to forestall union activity among the company's employees and to create a permanent barrier to union organization among them. We agree with counsel for the Board that interference is no less interference because it is accomplished through allurements rather than coercion, when, as here, the system is employed to stem a tide of organization and is adopted as a means of eliminating outside unions as collective bargaining agents of the company's employees, National Licorice Co. v. National Labor Relations Board, 309 U. S. 350."

The Court ordered the Company to:

"1. Cease and desist from:

"(a) Giving effect to its individual contracts of employment with employees (without prejudice to the assertion by the employees of any legal rights they may have acquired under such contracts), or to any modification, continuation, extension, or renewal thereof, and from requesting its employees to enter into any similar contracts of employment."

The Court also approved the refusal to receive the testimony of individual members of the Independent, and upheld the Board in findings that the Company had instigated the formation of and dominated and interfered with the administration of the Independent, and had discriminatorily discharged William Elliott.

V.

REASONS RELIED ON FOR ALLOWANCES OF WRIT.

1. The decision of the Circuit Court of Appeals in holding that the National Labor Relations Act precludes the right of individual contract between an employer and his employees either prior to or after the selection of repre-

sentatives for the purpose of collective bargaining, when the contracts (a) contain no provisions repugnant to the Act, and (b) are not obtained by means of any unfair labor practice, is directly contrary to and in conflict with the decisions of the Supreme Court of the United States in the cases of **Virginian Railway Co. v. Federation, 300 U. S. 515, and National Labor Relations Board v. Jones & Laughlin, 301 U. S. 1.**

2. The decision of the Circuit Court of Appeals in enjoining the Company from giving effect to individual contracts of employment (without prejudice to the assertion by the employees of any legal rights they may have acquired under such contracts), when such contracts (a) contain no provisions repugnant to the National Labor Relations Act, and (b) have not been obtained by means of any unfair labor practice, and in enjoining in perpetuity the Company from requesting its employees to enter into any similar contracts of employment, has decided a Federal question in a way probably in conflict with the following applicable decisions of the Supreme Court of the United States:

National Licorice Co. v. National Labor Relations Board, 309 U. S. 350, 364, 367;
Consolidated Edison Co. v. National Labor Relations Board, 305 U. S. 197;
Virginian Railway Co. v. Federation, 300 U. S. 515;
National Labor Relations Board v. Jones & Laughlin, 301 U. S. 1,

and has decided a question of substance relating to the construction or application of the National Labor Relations Act and of the Fifth Amendment to the Constitution of the United States which has not been, but should be, settled by the Supreme Court of the United States.

3. The decision of the Circuit Court of Appeals affirming the ruling of the Trial Examiner in refusing to admit the

testimony of individual members of the Independent with respect to the reasons why and the circumstances under which they joined said union, and the fact that no foreman, supervisor, superintendent, official or other representative of the Company had urged them to join such union, or attempted in any way to direct, control or affect their actions as members of such union, is directly contrary to and in conflict with the decision of the Supreme Court of the United States in the case of **National Labor Relations Board v. Indiana & Michigan Electric Co., 318 U. S. 9, 28,** and also is directly contrary to and in conflict with the decision of the United States Circuit Court of Appeals for the Eighth Circuit in the case of **Donnelly Garment Co. v. National Labor Relations Board, 123 Fed. (2d) 215, 222-223.**

4. The decision of the Circuit Court of Appeals upholding the finding of the Board that the Company had instigated the formation of the Independent, and dominated and interfered with its administration, the said finding not being supported by substantial evidence, is directly contrary to and in conflict with the decisions of the Supreme Court of the United States in the cases of **Consolidated Edison Co. v. National Labor Relations Board, 305 U. S. 197, and National Labor Relations Board v. Columbian Enameling & Stamping Co., 306 U. S. 292.**

5. The decision of the Circuit Court of Appeals upholding the finding of the Board that William Elliott had been discriminatorily discharged, the said finding not being supported by substantial evidence, is directly contrary to and in conflict with the decisions of the Supreme Court of the United States in the cases of **Consolidated Edison Co. v. National Labor Relations Board, 305 U. S. 197, and National Labor Relations Board v. Columbian Enameling & Stamping Co., 306 U. S. 292.**

VI.

PRAYER FOR WRIT.

Wherefore, your petitioner, Western Cartridge Company, respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Circuit Court of Appeals for the Seventh Circuit, and commanding that Court to certify and send to this Court for its determination, on a date certain to be therein named, a full and complete transcript of the record and of all the proceedings in the Consolidated Case numbered on its docket Nos. 8142 and 8155, and entitled "Western Cartridge Company, a corporation, Petitioner, vs. National Labor Relations Board and American Federation of Labor and Its Affiliated Organizations, Respondents,—Western Cartridge Employees' Independent Union, Etc., Petitioner, vs. National Labor Relations Board, American Federation of Labor and Its Affiliated Organizations, Respondents," and that the judgment and decree of said Circuit Court of Appeals for the Seventh Circuit be reversed and modified and the case be remanded with directions to set aside the order of the National Labor Relations Board and to deny the request for its enforcement, and that your petitioner may have such other and further relief in the premises as to this Court may seem proper.

Respectfully submitted,

WESTERN CARTRIDGE COMPANY,

By THOMAS S. McPHEETERS,
HENRY DAVIS,

Its Counsel.

1630 Boatmen's Bank Building,
St. Louis, Missouri.

BRIEF

In Support of Petition for a Writ of Certiorari.

I.

OPINIONS BELOW.

The opinion of the United States Circuit Court of Appeals for the Seventh Circuit was filed March 1, 1943, and is reported in 134 Fed. (2d) 240. The decree of the United States Circuit Court of Appeals was entered in conformity with said opinion on April 14, 1943, and is not officially reported.

The findings of fact, conclusions of law and order of the National Labor Relations Board are reported in 44 N. L. R. B. 1.

II.

JURISDICTION.

A statement of the grounds on which the jurisdiction of this Court is invoked is given in the petition (p. 2), and, to avoid duplication, is not repeated.

III.

STATEMENT OF THE CASE.

A statement of the case has been given in the petition (pp. 5 to 9), and, to avoid duplication, is not repeated.

IV.

SPECIFICATION OF ERRORS INTENDED TO BE URGED.

1. The Circuit Court of Appeals erred in holding that the National Labor Relations Act precludes the right of individual contract between an employer and an employee,

either prior to or after the selection of representatives for the purpose of collective bargaining, when the contracts (a) contain no provisions repugnant to the National Labor Relations Act, and (b) are not obtained by means of any unfair labor practice.

2. The Circuit Court of Appeals erred in enjoining the Company from giving effect to individual contracts of employment (without prejudice to the assertion by the employees of any legal rights they may have acquired under such contracts), when such contracts (a) contain no provisions repugnant to the National Labor Relations Act, and (b) have not been obtained by means of any unfair labor practice, and in enjoining the Company in perpetuity from requesting its employees to enter into any similar contracts of employment.

3. The Circuit Court of Appeals erred in affirming the ruling of the Trial Examiner refusing to admit the testimony of individual members of the Independent.

4. The Circuit Court of Appeals erred in upholding the finding of the Board that the Company had instigated the formation of the Independent, and dominated and interfered with its administration.

5. The Circuit Court of Appeals erred in upholding the finding of the Board that William Elliott had been discriminatorily discharged.

6. The Circuit Court of Appeals erred in refusing to set aside the order of the National Labor Relations Board and in granting the request for its enforcement.

V.

ARGUMENT.

A.

An examination of the individual contracts (a copy of which is set forth as an appendix hereto, pp. 31-35), will show that they contain no provisions repugnant to the National Labor Relations Act. The Circuit Court of Appeals, although strongly urged by both the Board and the American Federation of Labor, refused to make any such finding. These individual contracts are not "yellow dog" contracts. No employee, by signing such contract, waives or restricts any of the rights guaranteed to him by the Act. In this respect the contracts are fundamentally different than the contracts involved in the case of National Licorice Co. v. National Labor Relations Board, 309 U. S. 350, where the contracts committed each employee not "to demand a closed shop or a signed agreement by his employer with any union," and contained other illegal restraints upon the employees' rights. They also differ in this respect from the contracts involved in every other reported case, with one exception, wherein the Courts have invalidated individual contracts as being in conflict with the National Labor Relations Act. The one exception is the case of **National Labor Relations Board v. J. I. Case Co., 134 Fed. (2d) 70,** where the contracts contained no illegal provisions, and had not been obtained by means of any illegal acts, but had been urged by the company as the justification for a refusal to bargain collectively with a duly certified collective bargaining agency.

Nor were the individual contracts the fruits of any unfair labor practice. Neither the Board nor the Circuit Court of Appeals so found. While the Court found that the employees "were urged to execute such contracts, although they were also informed that it was optional with

them to do so'' (Supp. p. 19), such acts did not constitute an unfair labor practice, and constituted no violation of the Act. This is particularly true since the signing of the contracts was not made a condition of employment (Supp. pp. 274-275, 500, 501).

The individual contracts containing no illegal provisions, and having been obtained by no illegal means, they come within the protection of the Fifth Amendment to the Constitution of the United States, and within the class of contracts referred to by the Supreme Court in the cases of **Virginian Railway Co. v. Federation, 300 U. S. 515,** and **National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U. S. 1.**

The Railway Labor Act contains provisions similar to and at least as broad as those of the National Labor Relations Act, granting to employees of carriers the right to form, join and assist labor organizations and to bargain collectively through representatives of their own choosing, and prohibiting employer interference with the exercise of such rights. In the case of **Virginian Railway Co. v. Federation,** supra, the employer contended that the decree of the Court below undertook to forbid it to enter into contracts of employment with its individual employees, and was in that respect not warranted by the statute, and was in violation of the due process clause of the Fifth Amendment. This Court held that the employer misconstrued the decree, saying (l. c. 548):

> "We think, as the Government concedes in its brief, that the injunction against petitioner's entering into any contract concerning rules, rates of pay and working conditions, except with respondent, is designed only to prevent collective bargaining with anyone purporting to represent employees, other than respondent, who has been ascertained to be their true representative. When read in its context it must be taken to prohibit the negotiation of labor contracts, generally applicable to employees in the mechanical

department, with any representative other than respondent, **but not as precluding such individual contracts as petitioner may elect to make directly with individual employees."**

The Government brief, as quoted (l. c. 549), makes the statement that

> "Neither the statute nor the decree prevents the carrier from refusing to make a collective contract and hiring individuals on whatever terms the carrier may by unilateral action determine. In hirings of that sort the individual does not deal in a representative capacity with the carrier and the hiring does not set general rates of pay, rules, or working conditions."

Later the Court said (l. c. 557):

> "The provisions of the Railway Labor Act applied in this case, as construed by the court below, and as we construe them, do not require petitioner to enter into any agreement with its employees, **and they do not prohibit its entering any such contract of employment as it chooses, with its individual employees."**

L. c. 559:

> "The provisions of the Railway Labor Act invoked here neither compel the employer to enter into any agreement, **nor preclude it from entering into any contract with individual employees."**

In the case of **National Labor Relations Board v. Jones & Laughlin Steel Corp.**, supra, the contention was made that the National Labor Relations Act, and particularly the provisions of Section 9 (a), providing that representatives for the purpose of collective bargaining of a majority of the employees in an appropriate unit shall be the exclusive representatives of all the employees in such unit, violated the due process clause of the Fifth Amendment. This Court pointed out (l. c. 44) that said Section 9 (a)

merely "imposes upon the respondent only the duty of conferring and negotiating with the authorized representatives of its employees for the purpose of settling a labor dispute." The Court then compared this provision with the corresponding provision of the Railway Labor Act, saying (l. c. 44):

> "This provision has its analogue in § 2, Ninth, of the Railway Labor Act, which was under consideration in Virginian Railway Co. v. System Federation, No. 40, supra. The decree which we affirmed in that case required the Railway Company to treat with the representative chosen by the employees and also to refrain from entering into collective labor agreements with anyone other than their true representative as ascertained in accordance with the provisions of the Act. We said that the obligation to treat with the true representative was exclusive and hence imposed the negative duty to treat with no other. We also pointed out that, as conceded by the Government, the injunction against the Company's entering into any contract concerning rules, rates of pay and working conditions except with a chosen representative was 'designed only to prevent collective bargaining with anyone purporting to represent employees' other than the representative they had selected. It was taken 'to prohibit the negotiation of labor contracts generally applicable to employees' in the described unit with any other representative than the one so chosen, **'but not as precluding such individual contracts' as the Company might 'elect to make directly with individual employees.' We think this construction also applies to § 9 (a) of the National Labor Relations Act.**
>
> "The Act does not compel agreements between employers and employees. It does not compel any agreement whatever. **It does not prevent the employer 'from refusing to make a collective contract and hiring individuals on whatever terms' the employer 'may by unilateral action determine.'** "

In its opinion in the present case the Circuit Court of Appeals refused to follow the decision of this Court in the case of **National Labor Relations Board v. Jones & Laughlin**, supra, referring to its opinion in the case of **National Labor Relations Board v. J. I. Case Co., 134 Fed. (2d) 70,** wherein the Circuit Court of Appeals said, in substance, that the language of this Court last above quoted had been rejected in subsequent decisions of this Court, or that this Court did not mean exactly what it said in the Jones & Laughlin case. We respectfully submit that this Court has not in any reported opinion repudiated its holding in the cases of **Virginian Railway Co. v. Federation,** supra, and **National Labor Relations Board v. Jones & Laughlin,** supra, and that the decision of the Court of Appeals is directly contrary to and in conflict with the decisions of this Court in said two cases.

In this connection, note that in the case of National Labor Relations Board v. J. I. Case Co., supra, a collective bargaining agency had been selected and the company refused to deal with such agency, whereas, in the present case no bargaining agency had been certified at the time of the hearing and there was no such refusal to bargain.

While the Court of Appeals does not find that the individual contracts contain any provisions repugnant to the Act, or were obtained by means prohibited by the Act, it attempts to invalidate them by upholding a finding by the Board that "the effect of the contracts has been to forestall union activity among the company's employees and to create a permanent barrier to union organization among them."

The Court fails to point out any evidence in support of this finding, and there is no evidence in the record upon which such a finding can be based. In the first place, there is nothing in either the contracts themselves or in the manner of obtaining the same which prevents or restricts

union activity or creates any kind of a barrier to union organization. In the second place, the actual facts, as established by the Board's own records and findings, show the exact reverse of this finding to be true and affirmatively establish the fact that the contracts have not operated as a permanent or even temporary barrier to union organization. In 1937 more than 85 per cent of the Company's hourly-paid production and maintenance employees organized and joined an independent labor union of their own (Supp. pp. 250-252, 260, 267-270, 516-517). In an organizing campaign in the Company's Smokeless Powder Division, carried on during the first half of the year 1941, more than 500 of the Company's approximately 600 employees in that Division joined an American Federation of Labor union (Supp. p. 68). During the summer of 1941 several hundred additional members joined the American Federation of Labor and procured the charter of another local union. And under date of February 6th, 1943, the National Labor Relations Board certified the American Federation of Labor and Its Affiliated Organizations as the collective bargaining agency for all of the Company's maintenance and production employees. **11 Labor Relations Reporter 807.** During all of this time the individual contracts have been in force and have not interfered one iota in any union organizing activities on the part of the Company's employees. This finding of the Board is not only unsupported by any substantial evidence, but its falsity is established by the Board's own records in this very proceeding as well as in other proceedings.

There being nothing in the individual contracts repugnant to the Act, in that the employees are not required to waive, limit or restrict any of their rights guaranteed by the Act, the Circuit Court of Appeals suggests that they interfere with employees' rights by means of "allurements," presumably the bonus and savings provisions, saying:

> "We agree with counsel for the Board that interference is no less interference because it is accomplished through allurements rather than coercion, when, as here, the system is employed to stem a tide of organization and is adopted as a means of eliminating outside unions as collective bargaining agents of the company's employees."

But note that the bonus and savings provisions of the contract are not conditioned upon the waiver by the employee of any right guaranteed by the Act; they are conditioned merely upon the employee doing his work and remaining in the employ of the Company for the specified period. The Court cites in support of this ruling the decision of this Court in the case of **National Licorice Co. v. National Labor Relations Board, 309 U. S. 350,** which, we submit, makes no such holding. The effect of the Court's ruling in this connection is to say that it is illegal for an employer to allure his employees into not joining a union by giving them bonuses, savings plans, or other benefits which make the conditions of employment so attractive that the employees find it unnecessary to organize in order to assert and protect their rights. And this in a case where the alleged "allurements" are not in any way, expressly or by implication, conditioned upon the employees' not engaging in union organization. If such "allurements," not conditioned in terms or in fact upon abstention from union activity, are illegal as constituting a barrier to union organization, then any benefit or advantage which an employer might give to an employee might be likewise illegal, on the theory that a satisfied employee might not engage in union activity. While the Court said that "the system (of individual contracts) is employed to stem a tide of organization and is adopted as a means of eliminating outside unions as collective bargaining agents of the company's employees," the Court failed to indicate any evidence in the record to support such a finding, except that they were

revived "in 1933 when business was at a very low ebb and when there was much industrial unrest resulting in part from unionization." We respectfully submit that this is not substantial evidence sufficient to support any such finding, and, furthermore, that the Company's motive is immaterial if the contracts are themselves legal and have not been obtained by means of any unfair labor practice.

Superior Oil Co. v. Mississippi, 280 U. S. 390, 395;
Adler v. Fenton, 24 Howard 407, 410;
Gregory v. Helvering, 293 U. S. 465;
Isbrandtsen-Moller Co. v. United States, 300 U. S. 139.

As was said by Mr. Justice Holmes in the case of **Superior Oil Co. v. Mississippi**, supra, l. c. 395:

> "The fact that it desired to evade the law, as it is called, is immaterial, because the very meaning of a line in the law is that you intentioally may go as close to it as you can if you do not pass it."

And in the case of **Adler v. Fenton**, supra, the Court said (l. c. 410):

> "An act legal in itself, and violating no right, cannot be made actionable on account of the motive which superinduced it. It is the province of ethics to consider of actions in their relations to motives, but jurisprudence deals with actions in their relation to law, and for the most part independently of the motive."

B.

In the case of **Consolidated Edison Co. v. National Labor Relations Board**, supra, the Supreme Court pointed out that the National Labor Relations Act gives no express authority to the Board to invalidate contracts; that such authority, if it exists, must rest upon the provisions of Section 10 (c), which authorizes the Board to require the

employer "to take such affirmative action, including reinstatement of employees, with or without back pay, as will effectuate the policies of this Act." The Court said (l. c. 235):

> "We think that this authority to order affirmative action does not go so far as to confer a punitive jurisdiction enabling the Board to inflict upon the employer any penalty it may choose because he is engaged in unfair labor practices, even though the Board be of the opinion that the policies of the Act might be effectuated by such an order."

The Court then held that there was no basis for a finding that the contracts involved in the case (being contracts with a labor organization) had been obtained as a result of any unfair labor practices, or that they contained any provisions repugnant to the Act, and concluded that the Board was without authority to require the employer to desist from giving effect to such contracts.

In the case of **National Licorice Co. v. National Labor Relations Board**, supra, the Court held (l. c. 361):

> "Since the contracts were the fruits of unfair labor practices, stipulated for the renunciation by the employees of rights guaranteed by the Act, and were a continuing means of thwarting the policy of the Act, they were appropriate subjects for the affirmative remedial action of the Board authorized by §10 of the Act."

The Court, however, carefully distinguished its holding from its prior decision in the Consolidated Edison Company case.

The Court of Appeals in the present case has gone beyond the decisions of this Court in both the Consolidated Edison Company and National Licorice Company cases by not only enjoining the Company from giving effect to individual contracts of employment which do

not violate the Act, and which were not the fruits of any violation of the Act, but also by enjoining the Company in perpetuity from requesting its employees to enter into similar contracts of employment. No decision of the Supreme Court has ever gone so far as to deprive an employer of the benefits of a legal contract, legally obtained, nor has this Court ever expressly or by implication approved the issuance of an injunction perpetually enjoining an employer from requesting his employees, in a lawful and proper manner, to enter into lawful and proper contracts. This is a question of substance relating to the construction or application of the National Labor Relations Act and of the Fifth Amendment to the Constitution of the United States, which has not been, but should be, settled by the Supreme Court of the United States.

C.

At the hearing before the Trial Examiner there was offered the testimony of individual members of the Independent with respect to the reasons why and the circumstances under which they joined such union, the fact that they were not solicited or urged to do so by any representative of the Company, and the fact that after becoming members no representative of the Company had ever attempted in any way to direct, control or affect their actions as such members. Objections to the reception of such testimony, and to an appropriate offer of proof, were sustained. This testimony was offered on the theory that it tended to disprove the domination and support of the Independent by the Company. It was competent, relevant and material.

The decision of the Court of Appeals for the Seventh Circuit upholding this ruling is directly contrary to a decision of the Circuit Court of Appeals for the Eighth Circuit in the case of **Donnelly Garment Co. v. National Labor Relations Board, 123 Fed. (2d) 215, 222-223,** where,

on analogous facts, a contrary ruling was made. In the last mentioned case the testimony of individual employees, members of an independent union, was offered for the purpose of showing how and why they formed the union, and that no influence was brought to bear upon them by the employer, either in the formation or administration of the union. The Trial Examiner refused to receive the testimony. The Circuit Court of Appeals for the Eighth Circuit held that this was error, saying (l. c. 222-225):

> "This was not a case where domination and support by an employer of an independent union was conceded or where the independent union was conclusively shown to be of a character which could not, in any event, act as the bargaining representative of its members. The evidence of the Board which tended to show domination and support of the independent union by the Company was circumstantial.
>
> "It was not shown that any of the employees of the Donnelly Company whose testimony was offered was under any disqualifying disability. There was no presumption that these employees would commit perjury, and, even if the Trial Examiner believed that they would perjure themselves, that would not have affected the admissibility of their evidence. It is elementary that there is a distinction between the admissibility of evidence and its weight or sufficiency. National Labor Relations Board v. Bell Oil & Gas Co., 5 Cir., 98 F. (2d) 870, 871. Surely, if the testimony of an employee which tends to prove that an employer interfered with or supported the organization of an independent union is admissible, the testimony of an employee which tends to disprove domination and support of such a union by an employer is equally admissible. Evidence is relevant if it tends either to prove or to disprove any issue in a case. We do not say that the Trial Examiner was required to take the same testimony from 1200 witnesses. There were available to him well-known expedients for limiting the number of witnesses where their testimony was cumulative.

"We have no doubt that the testimony offered by the petitioners in their efforts to prove that the employees of the Donnelly Company formed the Donnelly Garment Workers' Union of their own free will and that the formation and administration of that union was free from employer influence, domination and support, and to explain how and why they came to organize the union, was competent, relevant and material and should have been received. The individuals who formed an unincorporated association certainly should know what sort of an organization it is, how it happened to be formed, who influenced its formation, and who controls it. We think there can be no doubt of the right of the members of such an organization to testify to such matters, and that their evidence is admissible regardless of its weight.

"That evidence of employees such as was offered in this case has ordinarily been regarded as admissible on the issue of employer domination and support and has been received and considered, is indicated in many cases. In Humble Oil & Refining Co. v. National Labor Relations Board, 5 Cir., 113 F. (2d) 85, 91, it was said of such testimony: 'If human testimony can establish anything, it establishes that Humble did not dominate or interfere with the organization of either Federation.' See, also, National Labor Relations Board v. Brown Paper Mills Co., Inc., 5 Cir., 108 F. (2d) 867, 871; National Labor Relations Board v. Skinner & Kennedy Stationery Co., 8 Cir., 113 F. (2d) 667, 670; Foote Bros. Gear & Mach. Corp. v. National Labor Relations Board, 7 Cir., 114 F. (2d) 611, 622, 623; National Labor Relations Board v. Automotive Maintenance Machinery Co., 7 Cir., 116 F. (2d) 350, 355, 356; American Enka Corporation v. National Labor Relations Board, 4 Cir., 119 F. (2d) 60, 63; National Labor Relations Board v. Sparks-Withington Co., 6 Cir., 119 F. (2d) 78, 82; National Labor Relations Board v. Moore-Lowry Flour Mills Co., 10 Cir., 122 F. (2d) 319, 429. Compare Bethlehem Steel Co. v. National Labor Relations Board, App. D. C., 120 F. (2d) 641, 653, but see the dissenting opinion in that case by Judge Stephens on pages 662 and 663. * * *

"That a refusal by an administrative agency such as the National Labor Relations Board to receive and consider competent and material evidence offered by a party to a proceeding before it, amounts to a denial of due process is not open to debate. See St. Joseph Stock Yards Co. v. United States, 298 U. S. 38, 73, 56 S. Ct. 720, 80 L. Ed. 1033; Ohio Bell Telephone Co. v. Public Utilities Commission, 301 U. S. 292, 304-305, 57 S. Ct. 724, 81 L. Ed. 1093; Railroad Commission v. Pacific Gas & Electric Co., 302 U. S. 388, 393, 58 S. Ct. 334, 82 L. Ed. 319; Morgan v. United States, 304 U. S. 1, 14, 15, 58 S. Ct. 773, 999, 82 L. Ed. 1129. As Mr. Justice Stone said in his dissenting opinion in Pittsburgh Plate Glass Co. v. National Labor Relations Board, 313 U. S. 146, 177, 61 S. Ct. 908, 923, 85 L. Ed. 1251, 'One of the most important safeguards of the rights of litigants and the minimal constitutional requirement, in proceedings before an administrative agency vested with discretion is that it cannot rightly exclude from consideration, facts and circumstances relevant to its inquiry which upon due consideration may be of persuasive weight in the exercise of its discretion. Interstate Commerce Commission v. Chicago, R. I. & P. Ry. Co., 218 U. S. 88, 102, 30 S. Ct. 651, 656, 54 L. Ed. 946; St. Joseph Stock Yards Co. v. United States, 298 U. S. 38, 75, 78, 56 S. Ct. 720, 736, 737, 80 L. Ed. 1033; Ohio Bell Telephone Co. v. (Public Util.) Commission, 301 U. S. 292, 304, 305, 57 S. Ct. 724, 730, 81 L. Ed. 1093'; and there can be no compromise of this requirement on 'the footing of convenience or expediency, or because of the natural desire to be rid of harassing delay.' Ohio Bell Telephone Co. v. Public Utilities Commission, 301 U. S. 292, 305, 57 S. Ct. 724, 731, 81 L. Ed. 1093. That the Board would or might have reached no different conclusion had the rejected evidence been received, is entirely beside the point. The truth is that a controversy tried before a court or before an administrative agency is not ripe for decision until all competent and material evidence proffered by the parties has been received and considered. See National Labor Relations Board v.

Thompson Products, Inc., 6 Cir., 97 F. (2d) 13, 15; Foote Bros. Gear & Mach. Corp. v. National Labor Relations Board, 7 Cir., 114 F. (2d) 611, 621.

* * * * * * *

"Our conclusion is that the petition of the Board for enforcement of the order under review must be denied. We think that the least that the Board can do, in order to cure the defects in its procedure caused by the failure of the Trial Examiner to receive admissible evidence, is to vacate the order and the findings and conclusions upon which it is based; to accord to the petitioners an opportunity to introduce all of the competent and material evidence which was rejected by the Trial Examiner; and to receive and consider such evidence together with all other competent and material evidence in the record before making new findings and a new order.

"Because of lack of due process in the proceedings before the Board, the question of the sufficiency of the evidence to support the findings and order will not be considered.

"The petition of the Board for the enforcement of its order is denied, and the case is remanded to the Board for further proceedings."

The conflict between the above decision of the Eighth Circuit and the decision of the Seventh Circuit in the present case is apparent.

The decision of the Circuit Court of Appeals is also in conflict with the decision of the Supreme Court of the United States in the case of **National Labor Relations Board v. Indiana & Michigan Electric Co., 318 U. S. 9, 28,** where the Court said (l. c. 28):

"The Act accords a great degree of finality to the Board's findings of fact, and this Court has been insistent that the admonition of the Act be strictly observed. But courts which are required upon a limited review to lend their enforcement powers to the

Board's orders are granted some discretion to see that the hearings out of which the conclusive findings emanate do not shut off a party's right to produce evidence or conduct cross-examination material to the issue. The statute demands respect for the judgment of the Board as to what the evidence proves. But the court is given discretion to see that before a party's rights are finally foreclosed his case has been fairly heard. Findings cannot be said to have been fairly reached unless material evidence which might impeach, as well as that which will support, its findings, is heard and weighed."

D.

Although the Board found that the Company instigated the formation of and dominated and interfered with the administration of the Independent, we respectfully submit that there is no substantial evidence in the record to support such finding. We will not, at this time, burden the Court with a recital and discussion of the evidence which the Board was compelled to rely upon to sustain such finding. However, if the writ of certiorari be granted, petitioner will undertake upon brief and argument to demonstrate to the Court that there is an utter lack of substantial evidence to support this finding.

E.

Likewise, with respect to the Board's finding that the Company discriminatorily discharged William Elliott, it is the position of the petitioner that such finding is not supported by substantial evidence in the record, as petitioner will endeavor to show upon brief and argument, if the writ is granted.

Petitioner, therefore, respectfully submits that the Court, in the exercise of its supervisory power, should grant to the petitioner a writ of certiorari, and thereafter review and reverse the judgment and decree of the Circuit Court of Appeals.

Respectfully submitted,

WESTERN CARTRIDGE COMPANY,
By THOMAS S. McPHEETERS,
HENRY DAVIS,

Its Counsel.

1630 Boatmen's Bank Building,
St. Louis, Missouri.

APPENDIX.

Original Contract.

This Agreement, Made this.....day of....., 19...., by and between the

Western Cartridge Company,

a corporation organized under the laws of the State of Delaware, as Party of the First Part and hereinafter called "Company" and .....of ....., Party of the Second Part and hereinafter called "Employee."

Witnesseth:

That for and in consideration of the mutual covenants herein contained and of One Dollar ($1.00) lawful money of the United States in hand paid by the Company to the Employee, the receipt of which is hereby acknowledged, it is hereby agreed:

1. That for a period of six months, beginning..... ....., 19...., the Company agrees to engage the services of the Employee at such time and for such periods as in the discretion of the Company its business may require and it is understood that the Company shall have the right at any time during the period of this contract to reduce the number of employees by lay offs and that if Employee is so laid off he shall not be entitled to any wages during the period of any such lay off. The Company agrees to pay the Employee the prevailing rate for the class or classes of work that the Employee shall perform from time to time during the period of this contract. As a declaration of policy both parties hereto recognize the necessity for modifying wage rates to meet changes in economic and competitive conditions.

2. Employer agrees to pay one and one-half (1½) the regular wages to Employee for overtime work.

3. That the Employee in accepting said employment, represents himself to be in good physical condition, and agrees to devote his entire time and his best energies during working hours to the business of the Company; to well and faithfully perform the duties delegated to him by the Company, its Superintendents or foremen; to abide by the rules of the Company; to lend the utmost cooperation to the Company, its Superintendents or foremen, to the end that his efficiency and productiveness may be increased and the manufacturing cost of any work or article, upon which he may be engaged, decreased; and in all reasonable ways to advance the welfare and protect the interests of the Company.

4. That should any of the representations herein made by the Employee prove to be untrue, or should the Employee fail during working hours to devote his entire time and best energies to the interests of the Company, or fail to cooperate with or carry out the rules and instructions of the Company, its Superintendents or foremen, or should his efficiency become impaired, or should he refuse to perform his duties as provided herein, this contract shall become null and void, and such Employee shall be subject to immediate suspension or dismissal, at the option of the Company.

5. That inventions and discoveries relating to the manufacture of ammunition, or any products made by this Company, or any appliances connected therewith, or applicable thereto, developed mentally or by research or experimental work carried on in whole or in part with material or apparatus, or at the expense of the Company, resulting from the efforts of the Employee during the term of his employment by the Company, shall be the property of the Company, and upon its request and at its expense, the Employee shall make full disclosure thereof, shall sign, acknowledge and verify all petitions, specifications, claims, powers of attorney, and other papers proper, convenient

or necessary for the making of application for letters patent and the prosecution of said application, and will assign such inventions and discoveries and letters patent to be issued thereon to the Company; Provided, however, that nothing in the foregoing shall be construed to prevent the Company from compensating or rewarding the Employee in any manner as may seem fit and proper to the Company for such inventions or discoveries.

Any inventions and discoveries made by Employee which are not covered by the foregoing paragraph shall be offered by Employee to the Company and the Company shall have a reasonable time in which to investigate such invention and discoveries and to negotiate with Employee for the purchase of same before Employee discloses or offers said inventions or discoveries to others.

The Company declares and Employee acknowledges that by action of the Board of Directors the business of the Company has been declared a secret business and Employee agrees not to disclose to others, not a party hereto, any of the trade secrets, detail of process of manufacture or equipment, or other information concerning or related to the Company's business.

6. Both parties hereto agree that on account of the experience necessary to satisfactorily produce the products of manufacture of the Company and to insure the maintenance of a high standard of quality of such products a minimum labor turnover is desirable and therefore, in consideration of the compliance by the Employee with the covenants upon his part above set out, the Company agrees to pay the Employee, in addition to the total earnings paid to him as provided in Paragraphs #1 and #2 the following bonus, it being expressly understood that such bonus is to be paid only in the event Employee faithfully fulfills all his obligations under this agreement,

(a) Two and one-half per cent (2½%) of the total earnings paid the Employee under Paragraphs 1 and 2, shall

be paid the Employee within three weeks after the completion of this contract; provided, however, and it is hereby understood and expressly agreed, that upon the violation by the Employee of any of the covenants upon his part herein contained the bonus specified in this paragraph shall be forfeited forthwith.

(b) In lieu of the aforementioned two and one-half per cent (2½%) the Company agrees to permit the Employee to sign an order authorizing the Payroll Department of the Company to deduct from the earnings paid the Employee under Paragraphs 1 and 2, a sum up to four per cent (4%) in even multiples of one-half per cent (½%) of such earnings, which will be deposited with the Company, and upon which the Company will pay interest at the rate of six per cent (6%) per year, and the Company will match the amount so deducted and deposited plus an additional two per cent (2%) of such earnings, which together with the Employee's contribution outlined herein shall be paid the Employee within three weeks after the completion of this Contract; provided, however, and it is hereby understood and expressly agreed that upon the violation by the Employee of any of the covenants upon his part herein contained all of that amount to be contributed by the Company and specified in this paragraph shall be forfeited forthwith and only the money contributed by the Employee shall be returned to the Employee.

7. The Employee agrees to accept and be guided by and conform to the instructions issued or given by authority of the Board of Directors or Executive Committee or the Executive Officers of the Company, acting through or by its various managers, superintendents or foremen.

8. It is understood and expressly agreed that in the event the Employee fails to continue in the employ of the Company for the entire period of this contract, that the Company shall not be obligated to the payment of any

bonus under Paragraph 6 hereof, and shall pay to the Employee only the amount deducted from said Employee's wages under Paragraph 6 (b) hereof.

9. That in the event of the non-operation, or the material curtailment of the operations, of the plant of the Company due to fire, flood, strikes, business depression, changing economic conditions, acts of God, or other causes beyond the control of the Company, this contract may be terminated by the Company; Provided, however, that in the event of the termination of this contract by the Company as outlined in this paragraph for any reason not due to the fault of the Employee, the bonus and deductions, if any, as provided in Paragraph 6 shall become due and payable within three weeks after such termination.

10. If employee is laid off, and if such lay off shall continue for six consecutive weeks or more, the Employee may terminate this contract, and in that event the Company shall, within three weeks after such termination by the Employee, pay over to Employee the bonus and deductions, if any, as provided in Paragraph 6.

11. That this contract may with the agreement and consent of both parties hereto, be amended, renewed, or replaced by a different contract, mutually satisfactory to both Employees and Company, at any time during the period thereof.

In Witness Whereof, the Company has caused its corporate name to be hereunto subscribed and its corporate seal to be hereunto affixed by its authorized Officers, and the Employee has hereunto subscribed his name as of the day and year first above written.

Western Cartridge Company,

By.....

Secretary

.....

Employee

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In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 163

WESTERN CARTRIDGE COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD AND AMERICAN FEDERATION OF LABOR AND ITS AFFILIATED ORGANIZATIONS

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court below (V, 11–21)[1] is reported in 134 F. (2d) 240. The findings of fact, conclusions of law, and order of the National Labor Relations Board (I, 13–50) are reported in 44 N. L. R. B. 1.

[1] The printed record filed in this Court is herein designated by a reference to the volume number followed by a reference to the page number.

JURISDICTION

The decree of the court below (V, 26–29) was entered on April 14, 1943. The petition for a writ of certiorari was filed on July 14, 1943. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and under Section 10 (e) and (f) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. Whether, upon finding that petitioner had caused its employees to enter into individual employment contracts in order to forestall unionization, that the contracts by their terms impose illegal restraints on the employees' exercise of the rights granted them by the Act, and that the contracts became part of the contract between petitioner and a dominated labor organization, the Board properly ordered petitioner to cease and desist from giving effect to the contracts "or to any modification, continuation, extension, or renewal thereof, and from requesting its employees to enter into any similar contracts."

2. Whether there is substantial evidence supporting the findings of the Board, which were sustained by the court below, that petitioner dominated, interfered with, and supported a labor organization of its employees known as the Independent Union and discriminatorily discharged

William Elliott in violation of Section 8 (1), (2), and (3) of the Act.

3. Whether the Board and the court below erred in sustaining the refusal of the Trial Examiner to permit petitioner to call as witnesses several thousand employees for the purpose of proving the motives which led them to join the dominated labor organization.

STATUTE INVOLVED

The pertinent provisions of the statute involved are set forth in the Appendix, *infra*, pp. 20–21.

STATEMENT

Upon the usual proceedings under Section 10 of the Act (I, 13–16), the Board issued its findings of fact, conclusions of law and order (I, 16–50). The facts, as found by the Board and as shown by the evidence, may be summarized as follows:

Petitioner, a large manufacturer of munitions, has more than 6,000 employees at its plant in East Alton, Illinois, where the unfair labor practices were committed (I, 16–17; 208).[2]

1. THE INDIVIDUAL CONTRACTS

During the summer of 1933, J. M. Olin, petitioner's vice president, finding that unionism was, to quote from his testimony, being "agitated throughout the entire [working] force" (I, 516, 529), addressed a mass meeting of the East Alton

[2] References preceding semicolons are to the Board's findings; succeeding references are to the supporting evidence.

employees and suggested that the employees establish a "Works Council Plan" like that in effect at petitioner's New Haven plant (I, 18; 529–530).[3] The employees did not, however, adopt Mr. Olin's suggestion at this time (I, 18; 536).

Despite the fact that business was at a low ebb in 1933, petitioner, at about the time of Mr. Olin's speech, revived a practice which it had discontinued some twelve years previously of offering its employees individual contracts, which, if lived up to, assured them a bonus of up to 6 percent of their annual earnings (I, 18; 272, 519, 563–567).[4] George Dawson, petitioner's personnel manager (I, 249–250), admitted at the Board hearing that the resumption of this financially

[3] The plan to which Vice President Olin referred has since been disestablished pursuant to a stipulation with the Board.

[4] The contract is for a fixed term, either six months or one year (I, 274), and it obligates the employee to devote his full time throughout that term to the business of the company (Bd. Exh. No. 16–A, I, 563–567, par. 3); breach of that undertaking entails, at the option of the company, the employee's "immediate suspension or dismissal" (*ibid.*, par. 4), and its faithful performance is made a condition precedent to the employee's receiving the bonus stipulated for in the contract. To obtain the bonus, the employee must "continue in the employ of the company for the entire period of [his] contract" (*ibid.*, par. 8). The contract also provides that the company may terminate it in the event of "the nonoperation, or the material curtailment of the operations of the plant * * * due to * * * strikes" (*ibid.*, par. 9). The employee in such case forfeits the bonus plus any sum which the company has deducted from his wages pursuant to the contract if the contingency resulting in the shut-down or curtailment is due "to the fault of the employee" (*ibid.*, par. 9).

burdensome practice was due, in part, to "industrial unrest" resulting from "unionization" (I, 273). Vice President Olin likewise testified that the revival of the contracts was intended to counteract "propaganda" exploiting the collective bargaining aspects of the National Industrial Recovery Act (I, 19; 519–520).[5] On this evidence, buttressed as it was by cogent proof of petitioner's avowed hostility to outside unions,[6] the Board found that the purpose of petitioner in reviving the individual bonus contracts was "to forestall union activity among [its] employees and to create a permanent barrier to union organization among them" (I, 20); and further, that such has been "the effect of the contracts since their introduction" (*ibid.*).[7]

[5] In this connection Mr. Olin stated at the hearing that he "had never been an enthusiast on N. R. A. or anything of its ilk" (I, 520).

[6] We summarized this proof at pp. 10–14, *infra*.

[7] Aside from their illegal purpose and effect, moreover, the Board found that "by [their] terms" the contracts interfered "with the employees' right to engage in concerted activity as guaranteed in the Act" (I, 19). In this connection, the Board pointed out (I, 19–20):

"In effect, the contract purported to give the [company] the right to terminate the employment of any employee who participated in a strike or any other concerted activity regarded as interfering with his 'faithfully' fulfilling 'all his obligations' [under the contract], and to deprive any such employee of his bonus. A premium was thus placed by the [company] on an employee's refusing to engage in concerted activities with his fellow employees, and the full weight of the [company's] approval was used in persuading employees individually to accept this restriction of their rights under the Act."

Since 1933, petitioner has assiduously and systematically urged its employees to sign the individual contracts. After three months' service, all new employees are either sent to the Personnel Department by their foremen or given notice, repeatedly if necessary, to report there for an interview (I, 19; 492–495, 506–508). In these interviews, the employees are told of the benefits which the contract provides and are urged to sign (I, 19; 273–274, 493–498, 559–560). When a contract is about to expire, the employee is notified, again repeatedly if necessary, to report to petitioner's contract office for the purpose of signing a renewal (I, 19; 274, 494–495, 506–508). Of the thousands of employees working for petitioner at the East Alton plant, only four refused, as the assistant to the plant manager testified, to sign the contract in response to this pressure (I, 500–501). In sum, the Board found that "although acceptance of the contracts was theoretically optional with the employees, * * * all employees were expected to sign contracts * * *" (I, 20). On these subsidiary findings, the Board concluded that "by urging and persuading its employees to sign the individual contracts of employment" since July 5, 1935, the date when the Act went into effect, petitioner has "interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act" (I, 21).

2. THE INDEPENDENT

From 1933 to 1937, there was no union among petitioner's employees, but in the spring of 1937 the C. I. O. launched a membership campaign at the East Alton plant (I, 21; 399, II, 23–24, 26, 54.) The Independent [8] was formed to counteract that movement (*ibid.*) Before going ahead with its formation, the principal organizer of the Independent, Charles Taylor, a machinist, asked General Manager Bassett whether petitioner had any objection to the project (I, 21; 315–319, 323). Bassett assured Taylor that petitioner would not object if the employees "stayed within their rights," and did not solicit membership on company time and property (I, 21; 316, 323). Having secured the company's permission to proceed, Taylor and his associates quickly perfected the organization of the Independent, and on June 4, 1937, they launched a vigorous membership drive (I, 22; 299, 319, 362–363, 368–369, II, 16–17). Despite Bassett's admonition, the Independent adherents carried on their organizational activities during working hours, at times in the presence of foremen. Indeed, since its inception, the Independent has extensively engaged in a variety of activities on company time and property, including the collection of monthly dues and the

[8] The full name of this unaffiliated labor organization is Western Cartridge Employees Independent Union (I, 12).

circulation of petitions for the selection of departmental representatives (I, 22, 25; 411, II, 17–18, 22, 23, 24, 26, 57, 74, Tr. 86, 135, 182, 191, 231–232, 279, 288–290).[9] The record does not disclose that petitioner voiced any objection to the use of its time and property for this purpose.

On July 26, 1937, the Independent submitted a proposed working agreement to petitioner, covering hours, wages, and other conditions of employment (I, 23; Bd. Exh. No. 9, I, 550–552, Tr. 73). On August 10, 1937, petitioner submitted to the Independent representatives, as a counterproposal, a so-called "basic agreement" (I, 23; 306–308, II, 19–20, Bd. Exh. No. 10, I, 553–554). The "basic agreement" consisted of three clauses: the first recognized the Independent as the exclusive bargaining agent of the East Alton employees; but only "with respect to all matters not covered by the contracts of employment between the company and those of its employees who have made them" (I, 24; Bd. Exh. No. 10, I, 553); the second clause declared that "neither the company nor the [Independent] admit or assert any right to change said contracts of employment without the consent of"the parties thereto, but if the parties should from time to time agree that a modification of the individual contract was desirable, the proposed

[9] The symbol "Tr." designates references to portions of the record which have not been printed in either the supplement to petitioner's brief or the appendix to the Board's brief, filed in the court below.

change shall be "recommended" to the employees (*ibid.*); and the third clause provided that the contract should remain in force for one year and thereafter until terminated by a prescribed notice (*ibid.*). The "basic agreement" was executed on August 12, 1937 (I, 24; II, 18–21, Bd. Exh. No. 10, I, 553–554).

The membership of the Independent began to decline in the latter part of 1940 (I, 25; 55–56). The security of its position was, moreover, threatened at this time by an organized drive which the American Federation of Labor had begun among the employees of the smokeless powder division (I, 26; 53),[10] where an A. F. of L. union was formed (I, 27; II, 10–11). To meet this threat, the executive committee of the Independent appealed to General Manager Bassett for aid (I, 25–26; 55–57, 61–62). Bassett informed the Independent representatives that the directors of the company had authorized a wage bonus of 2 percent to be given signers of the individual contracts, and Bassett suggested to the Independent representatives that "if the [Independent] got credit for [the bonus], * * * it would build [the Independent's] membership up" (I, 26; 55–59, 61–64). Notices conforming to Bassett's sug-

[10] A river flows through the plant site, separating the smokeless powder division from the other departments (I, 17; II, 22). To distinguish between the smokeless powder division and the other departments, we refer to the latter as the Western Side.

gestion were posted on the plant bulletin boards the day after this conference (I, 26; 59, 63). Petitioner gave the Independent further assistance at this time by entering into a working agreement with it, granting higher wages and improved working conditions in the casting department, where dissatisfaction was then rife (I, 27; 91–92, 110–114, 116–117, Bd. Exh. No. 15, I, 561–562).[11]

Throughout the A. F. of L. campaign and especially after it was extended to the Western Side, petitioner's officials and supervisors discouraged employees from membership in the A. F. of L. smokeless powder division union (I, 29). Thus, for example, Thomas Wortz, the superintendent of the smokeless powder division, sent for the president of the A. F. of L. union there and told the employee that he could "go places" with the company if he would "make [himself] right with them," adding the clarifying statement that the employee would be sent to the training school for foremen (I, 29; II, 27, I, 172–173). Wortz then went on to say that the employees should deal with the company through a "union of [their] own," instead of going over to East St. Louis and

[11] Day, the superintendent of the casting shop, and McCauley, his assistant, repeatedly prodded employee William Elliott, the Independent representative for that department, to be more aggressive in his Independent post (I, 27–28; 91, 545–546, II, 54, 55–56, 60–61). Day told Elliott that he saw no reason why "the Independent Union couldn't be made to work," adding that he counted on Elliott to help him in attaining that objective (I, 28; II, 55–56).

get[ting] a pot-bellied racketeer" to represent them (I, 29; II, 27–28). Wortz terminated the interview by saying that the A. F. of L. union was "no good," that it was made up of "a bunch of guys" who were "bosses and wouldn't work," men who lived off the wages of employees paid out in union dues (I, 29; II, 27, 28).[12]

On May 26, 1941, the A. F. of L. union,[13] chartered for employees in the smokeless powder division, won a Board election (I, 32; II, 109, Bd. Exh. No. 3–E). Disregarding the Board's certification of Local Union No. 22574 as the statutory bargaining agent of the employees in the smokeless powder division, petitioner entered into a new contract with the Independent on June 4, 1941, reaffirming the grant of exclusive recognition to the Independent as bargaining representative for *all* employees in the plant (I, 32; 72–73, Bd. Exh. No. 13, II, 132–139, 35–36, 62). On June 13, 1941, petitioner refused to recognize Local Union No. 22574, contending that the Board's unit determination was erroneous and that petitioner's June 4, 1941, contract with the Independent pre-

[12] Wortz used similar tactics in attempting to induce two other employees to resign from the A. F. of L. union (I, 29–30; II, 41–43, 77). Other supervisors followed his example in combating the A. F. of L. union (I, 30–32; II, 78–79, I, 483-486, II, 22, I, 54, II, 74–76, 45–48, 79–80, I, 86–88, 477–479).

[13] The name of this union is Chemical Workers, Local Union No. 22574 (A. F. of L.), hereinafter called Local Union No. 22574.

cluded such recognition (I, 33; Bd. Exh. No. 3–D, II, 107–108).[14]

On reviewing the foregoing evidence, the Board found that petitioner "encouraged, supported, and maintained the Independent in order to impede, and, if possible, prevent genuine self-organization of [its] employees" (I, 38).

3. THE DISCHARGE OF ELLIOTT

William Elliott, a machinist, entered petitioner's employ in 1925 (I, 39; II, 54). Concededly, he was a good workman during his many years in petitioner's employ (I, 102, 134–135, II, 64–65). He was discharged, allegedly, for having repeatedly criticized the management (I, 40; 92–109). The Board found that the company's explanation for his dismissal was a pretext to conceal the unlawful motive for his discharge (I, 42–43).

When the A. F. of L. membership campaign was under way, Superintendent Day and Supervisor McCauley repeatedly prodded Elliott to be more aggressive in discharging his duties as the representative of the Independent in their department (I, 27–28; II, 54, 55–56, 60–61, I, 91, 545–546). See fn. 11, *supra,* p. 10.

[14] After the National War Labor Board had intervened, petitioner formed a separate corporation which took over the operation of the smokeless powder division, and the new corporation entered into a contract with the A. F. of L. union, banning the use of the individual contracts in the smokeless powder division (I, 33–34; Bd. Exh. Nos. 3–K, 3–L, II, 117–127, 147–165).

These admonitions culminated in Day's statement to Elliott that he should become more aggressive as an Independent representative or resign the post (I, 28; 545–546). Elliott resigned from the Independent following this episode, and joined the A. F. of L. union, becoming its financial secretary on July 23, 1941 (I, 27–28, 39; II, 56–57, 67). His election to office in the A. F. of L. union became known immediately to the supervisors in his department (I, 39; II, 68–69, 71–72). His discharge occurred on July 25, 1941, two days after he became an officer of that union (II, 61–62).

The Board rejected petitioner's contention that Elliott was discharged because of his criticism of the management (I, 42): his chief complaint concerned the administration of a bonus system which petitioner had discontinued long prior to Elliott's dismissal; his known views on that subject had, moreover, been tolerated for years (I, 42; 91–93, Tr. 506–507). His disapproval of a proposal to change shift schedules—the incident which, assertedly, led to his discharge—was voiced at the express invitation of the management (I, 39; 146, 152–153, II, 89). In these circumstances, and especially in view of Superintendent Day's admission at the hearing that Elliott's apathy as an Independent representative was a contributing cause for his discharge (I, 28–29; 96), the Board concluded that "Elliott's critical attitude was used by the [com-

pany] as a pretext" to conceal the fact that he "was discharged * * * because of his withdrawal from the Independent and because of his membership in and activity on behalf of [the A. F. of L. union]" (I, 43).

Upon the foregoing subsidiary findings, the Board concluded (I, 47) that petitioner had interfered with, restrained, and coerced its employees in violation of Section 8 (1); and dominated, contributed support to, and interfered with the formation and administration of the Independent in violation of Section 8 (2) and (1); and had illegally discriminated against Elliott in violation of Section 8 (3) and (1). In addition to the usual cease and desist provisions, the Board's order directed petitioner to cease giving effect to the individual contracts found to violate the Act, to disestablish the Independent, to reinstate Elliott with back pay, and to post the usual notices (I, 48–50).

Thereafter, petitioner and the Independent filed separate petitions [15] for review in the court below (V, 1–2), and the Board answered, requesting enforcement (V, 2–8). In its opinion of March 1, 1943 (V, 11–21), the court below enforced the Board's order in full. On April 14, 1943, a decree was entered in conformity with the opinion (V, 26–29).

[15] On December 12, 1942, the court below ordered consolidation for the purposes of briefing and argument (V, 10).

ARGUMENT

1. Contrary to petitioner's repeated assertion (Pet. 2–3, 6, 9–10, 15–22), the individual contracts here involved were explicitly found to be the product of unfair labor practices because they were employed by petitioner to discourage its employees from becoming members of an outside union, and their effect, as intended, "has been to forestall union activity among [petitioner's] employees and to create a permanent barrier to union organization among them" (I, 20). This finding, concurred in by the court below (V, 16–17), is amply supported by the evidence summarized in the Statement (*supra*, pp. 3–6). In itself, this finding warranted the abrogation of the individual contracts, since, as this Court held in *National Licorice Co.* v. *National Labor Relations Board*, 309 U. S. 350, the Board may require an employer to cease giving effect to individual contracts which "have been procured in violation of the [Act]" (309 U. S. at 351; see also 359–360).[16] A second and independent ground for the abrogation of these contracts is that their terms impose "illegal restraints upon the employees' rights to organize and bargain collectively guaranteed by Sections 7 and 8 of

[16] See also *National Labor Relations Board* v. *Superior Tanning Co.*, 117 F. (2d) 881, 890–892 (C. C. A. 7), certiorari denied, 313 U. S. 559; *National Labor Relations Board* v. *Stone*, 125 F. (2d) 752, 754–756 (C. C. A. 7), certiorari denied, 317 U. S. 649.

the Act" (the *National Licorice* case, 309 U. S. at 359–360). Still another reason for their invalidation is that they are an integral part of the bargaining relationship between petitioner and the Independent (*supra,* pp. 8–9). Hence, their abrogation is required to make effective the cease and desist and disestablishment order relating to the Independent. Cf. *National Labor Relations Board* v. *Pacific Greyhound Lines, Inc.*, 303 U. S. 272, 275; *National Labor Relations Board* v. *J. Greenebaum Tanning Co.*, 110 F. (2d) 984, 988 (C. C. A. 7), certiorari denied, 311 U. S. 662.

Petitioner's contention that the terms of the individual contracts do not offend the Act, even if correct, would not warrant further review since the invalidation of the contracts is independently supported by the findings, based on substantial evidence, that they are the fruits of petitioner's unfair labor practices and are part of the bargaining relationship with the dominated Independent. The correctness of these findings, concurred in by the court below, manifestly presents no question of general importance.

2. Petitioner's contention (Pet. 3) that the Board's order restrains it "in perpetuity" from making individual contracts of employment even though they do not violate the Act proceeds from a mistaken interpretation of the order.[17] Read in

[17] This same contention was made in the petitions for certiorari filed in the *Superior Tanning* and *Stone* cases, *supra*, p. 15.

its context, the challenged provision of the order forbids only contracts subject to the infirmities which rendered continued performance of the contracts here involved inconsistent with the guarantees of the Act. The requirement that petitioner refrain from giving effect "to any modification, continuation, extension, or renewal" of the illegal contracts, and from "requesting its employees to enter into any similar contracts of employment" (I, 48) is therefore but a reasonable safeguard "to prevent violations, the threat of which in the future is indicated because of their similarity or relation to those unlawful acts which the Board has found to have been committed by the employer in the past." *National Labor Relations Board* v. *Express Publishing Co.*, 312 U. S. 426, 436–437.

3. Petitioner's contention that the Board's findings in regard to Elliott and the Independent, which were concurred in by the court below (V, 19–20), are not supported by substantial evidence raises no question of general importance. In any event, the evidence supporting those findings, summarized in the Statement (*supra*, pp. 7–14), is substantial and is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197, 229.

4. Petitioner's final contention (Pet. 10–11, 24–29) that it was deprived of a fair hearing be-

cause the Trial Examiner refused to allow it to call several thousand employees to testify as to why they joined the Independent was properly rejected by the court below (V, 18–19). The Trial Examiner allowed the parties to examine any witness who participated in the organizational stage of the Independent as to his reasons for joining (I, 404–405, 458). He excluded testimony of this character on the part of those who joined thereafter, stating: "It certainly would be highly cumulative and put an impossible burden upon the Trial Examiner and the Board here to ask two thousand or possibly more witnesses [to be called for that purpose]" (I, 458). The exclusion of this cumulative testimony was clearly a proper exercise of the Trial Examiner's discretion. *Donnelly Garment Co.* v. *National Labor Relations Board,* 123 F. (2d) 215 (C. C. A. 8) (Pet. 24–28), is not in conflict with the challenged ruling. The court explicitly recognized in the *Donnelly* case that cumulative evidence may be excluded where its reception would prolong the hearing beyond all reasonable bounds (123 F. (2d) at 222). Furthermore, the evidence excluded in the *Donnelly* case (contained in an offer of proof which was 23 pages long) included a great variety of facts bearing upon the domination issue, in addition to the notoriously unreliable subjective testimony here excluded. Cf. *United States* v. *General Motors Corp.,* 121 F. (2d) 376, 404–405 (C. C. A. 7), certiorari denied, 314 U. S. 618; *Bethlehem Steel Co.*

v. *National Labor Relations Board,* 120 F. (2d) 641, 653 (App. D. C.). *National Labor Relations Board* v. *Indiana & Michigan Electric Co.,* 318 U. S. 9, relied upon by petitioner (Pet. 28–29), is also not in conflict with the decision in this case. In the *Indiana & Michigan* case, this Court held that it would not disturb the exercise by the lower court of a discretionary authority to grant a new hearing where certain leaders of the complaining union had resorted to violence while the Board proceeding was under way. Such a decision manifestly in no way conflicts with the challenged ruling in the case at bar.

CONCLUSION

The decision of the court below is correct and presents neither a conflict of decisions nor any question of general importance. The petition for a writ of certiorari should be denied.

Respectfully submitted.

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AUGUST 1943.

APPENDIX

National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449):

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection. (29 U. S. C. 157.)

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: * * *

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: * * * (29 U. S. C. 158 (1), (2), and (3).)

SEC. 10 (e). The Board shall have power to petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the Dis-

trict of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. * * * The findings of the Board as to the facts, if supported by evidence, shall be conclusive. * * * (29 U. S. C. 160 (e).)

U. S. GOVERNMENT PRINTING OFFICE : 1943

United States Circuit Court of Appeals,
SEVENTH CIRCUIT.

WESTERN CARTRIDGE COMPANY, a Corporation,
Petitioner,
vs.
NATIONAL LABOR RELATIONS BOARD and AMERICAN FEDERATION OF LABOR and Its Affiliated Organizations,
Respondents.
No. 8142. Civil.

Consolidated Causes.

WESTERN CARTRIDGE EMPLOYEES' INDEPENDENT UNION, Etc.,
Petitioner,
vs.
NATIONAL LABOR RELATIONS BOARD, AMERICAN FEDERATION OF LABOR and Its Affiliated Organizations,
Respondents.
No. 8155. Civil.

BRIEF
Of Petitioner Western Cartridge Company.

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WESTERN CARTRIDGE EMPLOYEES' INDEPENDENT UNION, Etc., Petitioner, vs. NATIONAL LABOR RELATIONS BOARD, AMERICAN FEDERATION OF LABOR and Its Affiliated Organizations, Respondents.	No. 8155. Civil.

BRIEF

Of Petitioner Western Cartridge Company.

A STATEMENT OF THE FACTS.

This is a proceeding to review a Decision and Order of the National Labor Relations Board finding and concluding that (a) certain individual contracts of employment, signed by petitioner and its employees, interfered with, restrained and coerced such employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act (hereinafter sometimes referred to as the Act); (b) that petitioner had dominated and interfered with the formation and administration of the West-

ern Cartridge Employees Independent Union (hereinafter sometimes referred to as the "Independent"), and (c) that the petitioner had discriminatorily discharged one William Elliott; the Board ordering the discontinuance of the use of the individual contracts of employment, directing the disestablishment of the Independent, and ordering reinstatement of William Elliott.

Petitioner seeks to have said Decision and Order of the National Labor Relations Board reviewed and set aside, contending that there is no substantial and legally credible evidence to support the Board's findings and conclusions, and that the Decision and Order of the Board is contrary to law. The Board seeks enforcement.

The Independent has filed its separate petition for review, also seeking to have said Decision and Order reviewed and set aside. The two cases have, on motion, been duly consolidated.

Petitioner, Western Cartridge Company, a Delaware corporation (sometimes hereinafter referred to as the "Company"), operates a plant at East Alton, Illinois, where it is engaged in the manufacturing, sale and distribution of small arms ammunition, explosives and related products.

Beginning in the year 1914 or 1915 the petitioner began to use in its relations with its employees a form of individual employment contract, which had been prepared for it by Mr. F. W. Lehmann, former Solicitor General of the United States. These contracts were used continuously until the year 1921 when, during the depression in the ammunition business following the end of the first World War, they were discontinued. In 1933 the petitioner revived, with but slight changes, the use of these individual contracts and they have been used ever since (Supp. p. 519).

An employee becomes eligible to receive one of these contracts only after first serving a three months' probationary period, at which time he is offered a contract, designated as an "Original Contract," running for a period of six months. At the expiration of the Original Contract the employee, if retained, is offered a contract designated as an "Extension Agreement," running for a period of one year. Thereafter as these Extension Agreements expire the employee is given an opportunity to

renew the contract on the same form (Supp. pp. 273-275, 492-501, 559).*

All of the provisions of the Original Contract and of the Extension Agreement material to the present case are identical, except the designation of the length of the term.

Both of these forms of contract are set out in full in the Supplement to this brief (pp. 563-572), to which reference is hereby made.

A further statement of the facts with respect to the individual contracts and the circumstances surrounding their introduction and use will be found in the Argument, pages 12 to 24 hereof, where the findings and conclusions of the Board in this connection are discussed at some length.

In the year 1937 a group of the Company's nonsupervisory employees, on their own initiative, decided to form a labor organization of their own. An attorney was employed and the organization was perfected under the name of Western Cartridge Employees Independent Union (Supp. pp. 316-335). More than 85 per cent of the petitioner's hourly paid production and maintenance employees joined the Independent and a demand was made on the petitioner for recognition (Supp. pp. 250-2, 260, 267-270, 516-7). After demanding and receiving proof of majority representation, the petitioner recognized the Independent as the sole bargaining agent under the National Labor Relations Act, signing a contract with the Independent on August 12, 1937, known as "The Basic Agreement" (Supp. pp. 553-4).

A further statement of the facts with respect to the circumstances surrounding the formation and recognition of the Independent will be found in the Argument, pages 24 to 37 hereof, where the findings and conclusions of the Board in this connection are discussed at some length.

Following the recognition of the Independent, petitioner and the Independent engaged in collective bargaining repeatedly and almost continually from August of 1937 down to December of 1942, with respect to practically every matter which could conceivably be the subject of collective bargaining, including wages, hours and working

*Citations to the Supplement to petitioner's Brief will be designated as (Supp. p. ...). Citations to the Certified Transcript of the Record will be designated as (Tr. p. ...).

conditions (Tr. pp. 399-433; Supp. pp. 252-9, 230-48, 210-30).

In the latter part of December, 1940, Fred Olds, an organizer for the American Federation of Labor and a witness for the Board, according to his own testimony, met with one of the petitioner's employees. Again, according to his own testimony, there was no further activity until about the middle of January, 1941, when he met with two other employees of petitioner (Supp. p. 53). He had another meeting with the two employees on January 24, 1941, and on that day gave them a number of application blanks, and held a meeting of some of petitioner's employees on January 31, 1941. On February 5, 1941, the American Federation of Labor granted a charter, as Chemical Workers Local Union No. 22574, to a group of petitioner's employees in its Smokeless Powder Division. Thereafter, the American Federation of Labor carried on an active organizational campaign which was initially confined to the approximately 600 employees in the Smokeless Powder Division. This campaign was energetic and successful, and by the middle of the year 1941 more than 500 of the employees in the Smokeless Powder Division had become members of Local 22574 (Supp. p. 68).

That union contended that the Smokeless Powder Division constituted an appropriate bargaining unit. The Company did not agree, contending that the entire plant should be considered as a single unit. However, on petition of Local 22574, a hearing was held before a Trial Examiner and it was ultimately determined by the National Labor Relations Board that the petitioner's Smokeless Powder Division was separated from the rest of the East Alton plant by a river, a road and a fence, and did constitute an appropriate bargaining unit. Although petitioner resisted the determination as to such unit in the manner provided by the Act, and although various charges were filed alleging discriminatory discharges and transfers, the National Labor Relations Board has found that not one single employee was discharged, transferred or otherwise discriminated against because of activity in the organizing campaign or membership in Local 22574 (Supp. pp. 43-5).

The petitioner desired to obtain a review by this Court of the Board's decision on the appropriate bargaining

unit. No direct appeal being allowed by the Act, the petitioner sought, by denying recognition, to have the Board file with this Court its petition for enforcement, and in that proceeding to obtain its review. Local 22574, instead of following this procedure, took its case to the old National Defense Mediation Board, which ultimately denied to the petitioner its right to have this Court pass on the question, and directed the Company to recognize and bargain with Local 22574, which was done by contract dated August 2, 1941, and supplement thereto dated September 29, 1941 (Supp. 189-201).

In the meantime, along in the late spring or early summer of 1941, the American Federation of Labor, having completed its organization of the Smokeless Powder Division, extended its activities to the so-called "Western side" and began to sign up members, principally in the "cast shop" and "brass mill" (Tr. p. 45). Pursuant to these activities, several hundred members were signed up and another A. F. of L. local union, International Molders and Foundry Workers Union of North America, Local 333, was chartered in August of 1941 (Tr. p. 45).

A further statement of the facts with respect to the course of dealings between the Company and the Independent, Local 22574 and Local 333, from the year 1937 to and including the year 1941, will be found in the Argument, pages 38 to 61 hereof, where the findings and conclusions of the Board in this connection are discussed at some length.

On July 25, 1941, William Elliott, a caster in the cast shop, a part of the brass mill on the so-called Western side—perhaps a mile away from the Smokeless Powder Division—and a member of Local 333, was discharged.

A further statement of the facts with respect to the discharge of William Elliott will be found in the Argument, pages 61 to 74 hereof, where the findings and conclusions of the Board in this connection are discussed at some length.

THE CONTESTED ISSUES.

Briefly stated, the contested issues are (1) whether or not the individual employment contracts being used by the Company in dealing with its employees violate the National Labor Relations Act because they in effect restrict and limit the right of the employees to strike and engage in concerted activity, and were used by the petitioner to impede and discourage self-organization among its employees, (2) whether or not the Company dominated and interfered with the formation and administration of the Independent and contributed support to it, and (3) whether or not William Elliott was discharged because of his withdrawal from the Independent and because of his membership in and activity on behalf of Local 333.

PROPOSITIONS OF LAW RELIED ON.

I.

Evidence with respect to the background of a Company's labor relations, even though relating to events occurring prior to the effective date of the Act, is admissible as lending color to and explaining events which have occurred since the effective date of the Act.

N. L. R. B. v. Pennsylvania Greyhound Lines, 303 U. S. 261;
N. L. R. B. v. The Falk Corp., 308 U. S. 453;
N. L. R. B. v. Pacific Greyhound Lines, Inc., 91 Fed. (2d) 459;
N. L. R. B. v. H. E. Fletcher Co., 108 Fed. (2d) 459.

II.

The Act does not preclude such valid individual contracts as a company might elect to make directly with individual employees.

N. L. R. B. v. Jones & Laughlin, 301 U. S. 1, 45;
N. L. R. B. v. Bear Brand Hosiery Company, ... Fed. (2d) ...;
N. L. R. B. v. Jahn & Ollier Engineering Co., 123 Fed. (2d) 589;

N. L. R. B. v. Superior Canning Co., 117 Fed. (2d) 881;
N. L. R. B. v. Vincennes Steel Corp., 117 Fed. (2d) 169;
J. I. Case Co. (1942), 42 N. L. R. B. No. 27.

III.

An employee out on strike is still considered as an employee of the Company.

N. L. R. B. v. Mackey Radio & Telegraph Co., 304 U. S. 333;
Stewart Die Casting Corp. v. N. L. R. B., 114 Fed. (2d) 849.

IV.

It is the Court's duty to sustain the legality of reasonable contracts in whole or in part whenever it can do so, unless it clearly appears that they contravene public right or the public welfare.

N. L. R. B. v. Columbian Enameling & Stamping Co., Inc., 96 Fed. (2d) 948, 953;
12 American Jurisprudence 670.

V.

The Board's findings must be supported by substantial evidence and not based on mere suspicions.

N. L. R. B. v. International Shoe Co., Inc., 116 Fed. (2d) 31;
Appalachian Elec. Power Co. v. N. L. R. B., 93 Fed. (2d) 985, 989;
Ballston-Stillwater Knitting Co., Inc., v. N. L. R. B., 98 Fed. (2d) 758;
Martel Mills Corp. v. N. L. R. B., 114 Fed. (2d) 624.

VI.

The fact that an employer extends certain privileges to one union does not constitute discrimination in favor of, or encouragement, support or domination of or interfer-

ence with, such union, provided that the employer does not withhold like privileges from other unions.

Ballston-Stillwater Knitting Co., Inc., v. N. L. R. B., 98 Fed. (2d) 758;
Foote Bros. Gear & Machine Corp. v. N. L. R. B., 114 Fed. (2d) 611, aff'd on reargument 121 Fed. (2d) 802;
N. L. R. B. v. Mathieson Alkali Works, Inc., 114 Fed. (2d) 796.

VII.

Under the Act no direct appeal to the courts from a decision of the Board in a representation case is allowed to an employer.

N. L. R. B. v. The Falk Corp., 308 U. S. 453;
Cupples Company, Manufacturers, v. N. L. R. B., 103 Fed. (2d) 953;
Pittsburgh Plate Glass Co. v. N. L. R. B., 313 U. S. 146;
Marlin-Rockwell Corp. v. N. L. R. B., 116 Fed. (2d) 586.

VIII.

Even if the Company did welcome the organization of the Independent and preferred that union to any other, that fact would not support a finding of interference, domination or support.

Cupples Co., Manufacturers, v. N. L. R. B., 106 Fed. (2d) 100, 114.

IX.

Mere isolated expressions of minor supervisory employees which appear to be nothing more than the utterance of individual views, not authorized by the employer, and not of such a character or made under such circumstances as to justify the conclusion that they were an expression of its policy, will not justify a finding against the employer.

N. L. R. B. v. Mathieson Alkali Works, 114 Fed. (2d) 796, 802;

N. L. R. B. v. Whittier Mills Co. et al., 111 Fed. (2d) 474, 479;
N. L. R. B. v. Link-Belt Co., 311 U. S. 584, 599.

X.

Sporadic and occasional statements on the part of minor supervisory employees might justify a cease and desist order, but would not justify an order of disestablishment.

Humble Oil & Refining Co. v. N. L. R. B., 113 Fed. (2d) 85, 88, 92.

XI.

The evidence to support a finding that a discharge was discriminatory and to sustain an order of reinstatement must be substantial, and the absence of evidence cannot be cured by piling inference upon inference.

Interlake Iron Corp. v. N. L. R. B., 131 Fed. (2d) 129;
N. L. R. B. v. Williamson-Dickie Mfg. Co., 130 Fed. (2d) 260;
N. L. R. B. v. Goodyear Tire & Rubber Co., 129 Fed. (2d) 661.

XII.

The Company does not have to prove that it has not dominated or interfered with the Independent, and that it did not discriminate in discharging William Elliott. The burden of proof is on the Board to establish domination of the Independent and discrimination in the discharge of Elliott.

Interlake Iron Corp. v. N. L. R. B., 131 Fed. (2d) 129;
N. L. R. B. v. Union Mfg. Co., 124 Fed. (2d) 332;
Hazel-Allas Glass Co. v. N. L. R. B., 127 Fed. (2d) 109;
N. L. R. B. v. Express Publishing Co., 312 U. S. 426.

ARGUMENT.

INTRODUCTORY.

The Background of the Company's Labor Relations.

The Board has held in the present case, and the Courts have repeatedly held, that evidence with respect to the background of a company's labor relations, even though occurring prior to the effective date of the Act, is admissible as lending color to and explaining events which have occurred since the effective date of the Act **(N. L. R. B. v. Pennsylvania Greyhound Lines, 303 U. S. 261; N. L. R. B. v. The Falk Corp., 308 U. S. 453; N. L. R. B. v. Pacific Greyhound Lines, Inc., 91 Fed. [2d] 459; N. L. R. B. v. H. E. Fletcher Co., 108 Fed. [2d] 459).** If it is proper to look at a company's past record of hostility to union organization as an aid in interpreting the acts and conduct complained of, it should be equally in order for a company to point to a record showing an absence of any such hostility for the purpose of securing a favorable interpretation of its acts and conduct.

In the present case there is no background of anti-union policy on the part of the petitioner and no evidence of any of the matters usually found in those cases where it is alleged that a union is company dominated or that an employee has been discriminatorily discharged.

The Western Cartridge Company has been in business at East Alton, Illinois, for fifty years. During all of those years and up until the past few months its labor relations have been peaceful, orderly and, apparently, satisfactory to both the company and its employees. Until the past few months the only break in this long record of peaceful labor relations was an abortive strike in 1934 on the part of an insignificant number of its employees, about 35 out of a total of 2,200, which was quickly settled, without the use of strikebreakers.

The Independent Union was organized in the summer of 1937. There is absolutely no evidence in the record showing or tending to show that prior to 1937, or since, there has been any open or avowed hostility on the part of the Company toward union activity on the part of its em-

ployees, or on the part of outside organizers for labor unions. There have been no attacks on or interference with the activities of such outside organizers. There has been no industrial espionage or company membership in anti-union employers' organizations. There has never been any company rule against union activity on the part of its employees, so long, of course, as such activity does not interfere with the job.

There has been no violence on the part of company guards or other employees toward outside professional union organizers or toward employees of the company who have openly, actively and vigorously engaged in union activities on and off of company property and during and outside of working hours. There have been no wholesale discharges of employees who have joined the unions, whether they joined the A. F. of L., the C. I. O. or the Independent. During the entire organizing campaign prior to the hearing before the Trial Examiner, a period of one year, but a single disciplinary act on the part of the Company, the discharge of William Elliott, was found by the Board to be discriminatory, and, as we shall point out later, there is no substantial evidence in the record to support such finding. The men active in and holding office in Local 22574 and Local 333 have not only continued to work for the Company, but have received both general and individual raises in pay, and in some instances have been promoted to more responsible positions. The President of Local 22574 continued to work for the Company long after he had given ample cause on more than one occasion to be discharged.

As for the actual formation and administration of the Independent, there was no prior company union or employees' representation plan. No speeches were made by Company officials, no mass meetings were held, no bulletins or other Company propaganda distributed, and no other similar action occurred at the time of the formation of the Independent. The Trial Examiner expressly found in his Intermediate Report that there is no evidence in the record that the Company instigated the formation of the Independent. There is no evidence of any aid given by the Company in the formation of the Independent, no evi-

dence of any coercion of employees into the Independent by supervisory employees, no membership of foremen or other supervisors in the Independent, no direct or indirect financial assistance, no use of Company facilities, and no evidence of Company domination in the Constitution and By-Laws.

In short, there is an utter absence of any evidence of any of those facts which are so commonly found to accompany anti-labor policies and company domination of unaffiliated unions. All of these facts tend to rebut any charge of Company interference or of Company domination. They aid and strengthen the "presumption * * * that the employer has not violated the law." N. L. R. B. v. Union Mfg. Co., 124 Fed. (2d) 332, 333. The evidence that is not in the record is highly significant as tending to corroborate the affirmative testimony that is in the record to the effect that the Company adopted and carried out a strictly "hands off" policy.

In the course of the argument we will follow the pattern set in the Decision and Order of the Board in taking up the findings and conclusions upon which the Order is based. Inasmuch as the Board's findings of facts and its conclusions as to the facts follow the same general order, we shall discuss them jointly without indicating any distinction between them except in those cases where it may seem desirable to do so.

THE UNFAIR LABOR PRACTICES.

A. The Alleged Interference, Restraint, and Coercion; Domination and Support of, and Interference With, the Independent.

1. The Individual Employment Contracts.

The Board's findings and conclusions with respect to the individual employment contracts relate to (a) certain events which occurred in 1933, (b) the circumstances under which employees were asked to execute such contracts, (c) the form of the contract as being by its terms an interference with the employee's right to engage in concerted activities as guaranteed in the Act, and (d) the purpose of the Company in reintroducing and using the contracts.

Considering these findings in turn:

(a) **Certain events which occurred in 1933.**

In discussing these findings relating to events which occurred in 1933, it is important to bear in mind, as has been indicated above and will appear more specifically hereafter, that, aside from the individual contracts themselves, and the discharge of William Elliott, there is absolutely no evidence in the record of any definite, specific and substantial unfair labor practice on the part of the Company. If the individual contracts in and of themselves are legal and do not violate the Act, and if Elliott's discharge was not discriminatory, then it will be difficult to find in the entire record any concrete evidence of any unfair labor practice. The legality of the individual contracts thus becomes the crux of the entire case in so far as the alleged domination of the Independent is concerned. The Board, in its Decision and Order, apparently recognizes this fact, and, realizing that a Court might not uphold its ruling on the legality of the contracts, has sought to bolster up its finding in that respect with a number of findings, trivial and insignificant both individually and in the aggregate, and, in addition, by suggestion and innuendo, has attempted to create the impression of an anti-union attitude on the part of the company without expressly so finding.

For example, the Board finds that "J. M. Olin, the respondent's Vice-president, testified in effect that, because of the 'agitation' and the 'uproar' created in the plant by this group of employees, he addressed a mass meeting * * *" (Supp. p. 18). Now there is no reason why the Board should have placed the words "agitation" and "uproar" in quotation marks, except to create the impression that, by using these terms, Mr. Olin revealed a hostile attitude toward labor unions. Union organizers are frequently called "agitators" by hostile employers, and apparently the Board wished to leave the impression that by the use of that expression Mr. Olin was identifying himself as belonging in that class of employers. Now, the fact is, as will be evident from a reading of Mr. Olin's testimony (Supp. pp. 529-32), that he was using the word "agitation" and "agitated" carefully and exactly, because they correctly described exactly what was taking place.

He was not calling names, but reciting facts. He used the term "uproar" because there was an uproar, and it indicates no feeling for or against labor unions, nor is it evidence which could by any stretch of the imagination be held to support a finding of any unfair labor practice.

The Board next finds (Supp. p. 18) that the company revived its former practice of using individual contracts "At about the same time in 1933 that the question of union organization was being discussed in the plant by the employees and the management," and later (Supp. p. 34) concludes that "In 1933, prior to the effective date of the Act, the respondent successfully smothered the first efforts of its employees to seek self-organization." The record shows that the use of the individual contracts was revived in July of 1933 (Supp. p. 272), but utterly fails to show at what time in the year the question of union organization was being discussed. Not only is there no evidence in the record to show that the revival of the use of individual contracts was simultaneous with or even followed in point of time the discussion of union organization, but there is also nothing in the record to show that the two events were connected in any way except that they occurred in the same calendar year. Nor is there any evidence in the record that the majority of the company's employees sought self-organization or that any efforts to organize were smothered or otherwise affected in any way by the individual contracts. The only evidence in the record on this point was that offered by the company which showed the real reason for the revival of the use of the individual contract and expressly denied that it was related to the question of union organization in the plant (Supp. pp. 518-523). There is not only no substantial evidence to support this finding and conclusion of the Board, but it is directly contrary to the only evidence on the point in the record.

Next we find the Board making a slight but significant distortion of the evidence. The Board finds (Supp. p. 18) that "According to George Dawson, * * * the revival of the individual contracts in 1933 was **due**, in part, to the 'industrial unrest throughout the country' resulting from 'unionization.'" Now the fact is that while Mr. Dawson did mention the industrial unrest throughout the country, and did say that such industrial unrest resulted, in part,

from unionization, **he did not testify that the revival of the individual contracts was due in whole or in part to such matters.** When he was asked on cross-examination by counsel for the Board whether there had been an attempt at union organization in the year 1933, he answered, "No, not to my knowledge was there any attempt. There was much industrial rest (sic) throughout the country, **and the basis of our individual agreement was twofold. If you would like I can speak on that.**" But counsel for the Board did not want Mr. Dawson to testify as to the basis for the individual contracts, saying, **"No, I do not particularly want to elaborate on that particular point. This industrial unrest was in part unionization?"** To this Mr. Dawson answered, "I believe in part it was evidenced that it was the results of unionization" (Supp. p. 273). The distortion of Mr. Dawson's testimony is slight, but unmistakable. The Board has him testifying that the individual contracts were revived **because** of "unionization." Actually he testified to no such thing.

We find another example of subtle distortion of the testimony in the very next finding of the Board where it says "Olin testified that the individual contracts were reintroduced in 1933 because of the respondent's desire 'to get a little closer to (its) employees' and **thereby** stabilize employment * * *" (Supp. pp. 18-19). Mr. Olin did make the statement that the company "desired to get a little closer to our employees than we were, * * *" (Supp. p. 520), and later on he testified, in answer to the direct question of the Trial Examiner as to the reason why the company used the individual contracts, that "The fundamental objective, of course, is to stabilize our employment," after which he spelled out somewhat the way in which these contracts served to stabilize employment, which had nothing to do with getting closer to the employees (Supp. p. 522). It is the Board, and the Board alone, which connects up the desire "to get a little closer to our employees" with the stabilization of employment. It would seem to be objectionable to the Board for an employer to get a little closer to its employees, or, at least, the Board seems to find something sinister in the statement. If the policy of employers getting closer to their employees were to be encouraged instead of discouraged, we would have less labor unrest to contend with.

Finally, in connection with the events of the year 1933, the Board found that "Olin stated at the hearing that he 'had never been an enthusiast on N. R. A. or anything of its ilk.'" It is, of course, utterly immaterial what Mr. Olin's personal enthusiasms may or may not have been, so long as they were not carried over into any unfair labor practices on the part of the Company and were not communicated in any way to the employees, and there is no evidence in the record that either of these things was done. The reason for Mr. Olin's lack of enthusiasm for the N. R. A. was not given, although the Board assumes that it was because Section 7 (a) of the Act guaranteed employees the right to form and join labor organizations. Surely it is hardly necessary for us to point out that the N. R. A. Act contained provisions other than Section 7 (a), and that these other sections were just as likely a ground for Mr. Olin's, or any business man's, lack of enthusiasm, as was Section 7 (a). During this same testimony Mr. Olin made the statement that, having in mind the Independent's original demands, he "was not particularly enthusiastic about the Independent Union" (Supp. p. 533). There is just as much basis for a finding that Mr. Olin was hostile to the Independent as for the implication in the Board's finding that he was hostile to the right of employees to form and join labor organizations.

We respectfully submit that, not only are the findings of the Board with respect to the events of 1933 of no significance and constitute no basis for the ultimate decision and order, but they are, in the respects indicated, not supported by any substantial evidence in the record.

(b) **The circumstances under which employees were asked to execute such individual contracts.**

The Board next finds that eligible employees were "urged" to execute the individual contracts (Supp. p. 19), and concludes that "the respondent has at all times since 1933, including the period following the effective date of the Act, made it clear to its employees that all of them were expected to sign the individual employment contracts" (Supp. p. 34). It may be of some significance that the Trial Examiner in his Intermediate Report found that

there was a "virtual requirement" that all employees sign such contracts, and the Board, realizing that there is no evidence to support such a finding, reduced it to the more innocuous one that the employees were "expected" to sign them. Whatever the Company may have expected in the sense of "to look forward to, as to something that is believed to be about to happen" or "to look for with some confidence," there is absolutely no evidence that the company expected its employees to sign such contracts in the sense of "to demand; require." On the contrary, this finding, if the word "expected" is used in the latter sense, is directly contrary to all of the evidence in the entire record pertinent to the point. The Board merely offered the contracts in evidence and brought out the fact that they were in use in the operation of the plant. The Board did not charge in its complaint, and not one single witness testified, directly or by implication, to the effect that there was any requirement that the employees sign the individual contracts as a condition of continued employment. On the contrary, every witness who was asked the question testified specifically and affirmatively that there was no such requirement (Supp. pp. 273-5, 492-501). The employees were told in writing (Board's Exhibit No. 14, page 16, Supp. p. 559) as to the terms under which they would be "eligible" to sign such contracts, and more specifically that **"The signing of such a contract is optional on your part."** It was specifically brought out that a number of the employees refused to sign such contracts without affecting in any way their conditions of employment with the Company (Supp. pp. 274-5, 500-1). On the record there is absolutely no evidence to support this finding.

(c) **The form of the contract as being by its terms an interference with the employee's right to engage in concerted activities as guaranteed in the Act.**

The Board next finds—and we believe that this finding is the crux of the entire case with respect not only to the validity of the contracts as such, but also to the alleged Company domination of the Independent—that the form of contract "is, by its terms, an interference with the employees' right to engage in concerted activity as guaran-

teed in the Act." More specifically, the Board found that the contract violated the Act in that it "purported to give the respondent the right to terminate the employment of any employee who participated in a strike or any other concerted activity regarded as interfering with his 'faithfully' fulfilling 'all his obligations,' and to deprive any such employee of his bonus" (Supp. p. 19).

The best and most effective answer to this finding is the contract itself (Supp. pp. 563-572), to which reference is hereby made.

We challenge counsel for the Board to point out any provision of this contract which gives or purports to give the company the right to terminate the employment of any employee who participates in a strike or any other concerted activity regarded as interfering with his "faithfully" fulfilling "all his obligations" and to deprive any such employee of his bonus. It simply is not there. Certainly the contract contains no such express provision, and we submit that it cannot be read into the contract by implication.

If it is to be found at all, it must be found in either paragraph 3, which contains nothing more than the general covenant on the part of the employee to do the work for which he is employed, or in paragraph 9, which provides for termination of the contract by the company on the happening of certain specified events. If paragraph 3 is to be construed as restricting an employee's right to strike or engage in concerted activities, then it is difficult to see how any individual contract can be valid. However, the Supreme Court has specifically held in the case of **N. L. R. B. v. Jones & Laughlin, 301 U. S. 1, 45,** that the Act does not preclude such individual contracts as a company might elect to make directly with individual employees. **If paragraph 3 be construed to contain a restriction upon the employee's right to strike or engage in concerted activities, then every contract by which an employee agrees to work is, ipso facto, invalid, because an agreement to work is to be construed as an agreement not to strike.** We have been unable to find any reported case of any Court holding or even suggesting that such could be the law. This Court has held, either expressly or by clear implication, that

valid individual contracts of employment may be made between an employer and an employee, so long as (1) they do not by their terms violate the Act and (2) they are not used by the employer for the purpose of violating the Act. **N. L. R. B. v. Bear Brand Hosiery Company, ... Fed (2d) ...; N. L. R. B. v. Jahn & Ollier Engineering Co., 123 Fed. (2d) 589; N. L. R. B. v. Superior Canning Co., 117 Fed. (2d) 881; N. L. R. B. v. Vincennes Steel Corp., 117 Fed. (2d) 169.**

Even the Board itself has recognized the right of an employer and its employees to enter into valid individual contracts of employment in the case of **J. I. Case Co. (1942), 42 N. L. R. B. No. 27,** where the Board said:

> "The duty (of collective bargaining) is necessarily paramount to the freedom of contract which the employer may have enjoyed prior to the enactment of the statute or before the collective agent has been chosen. Until such representative is designated, the employer may, of course, deal individually with his employees concerning any aspect of the employment relationship so long as he does not exact terms repugnant to the Act and does not offer the contracts for the purpose of infringing rights under the Act."

Certainly there is nothing in paragraph 3 of the contract which can be said to deprive the employees of any of the rights guaranteed to them by the Act. The Board picks out of Section 6 of the contract and sets off with quotation marks some of the language contained therein, whereby the bonus is conditioned upon the employee faithfully fulfilling all his obligations. But if an agreement of an employee to work is valid, then certainly an agreement of an employer to give a bonus if such work is faithfully done does not make the contract invalid. Furthermore, the language quoted from Section 6 must be read in the light of the rest of Section 6 where it is expressly provided that the purpose of the bonus is to assure "a minimum labor turnover." A provision in a contract which is intended to prevent employees from leaving the employment of the company whenever they are tempted by a slightly more attractive job, can hardly be construed as a provision

prohibiting them from striking or engaging in other concerted activity.

Nor does paragraph 9 restrict, directly or indirectly, the employees' right to strike or engage in any other concerted activity. This paragraph merely provides that the contract may be terminated by the company whenever the plant is shut down or its operations are materially curtailed for various causes beyond the control of the company. Strikes are included among certain other named causes, but the employee does not agree, directly or indirectly, that he will not go out on strike. He is as free to go out on strike after signing the contract as he is before. Paragraph 9 goes on to provide specifically that in the event the contract is terminated by the company, for any of the reasons outlined in said paragraph 9, the bonus provided for in paragraph 6 shall become due and payable within three weeks after such termination, instead of at the end of the term of the contract itself. **Note that the paragraph does not provide for the cancellation or elimination of the bonus under any circumstances. It merely provides affirmatively that under certain named conditions the employee is to receive his bonus earlier than he would otherwise be entitled to it.**

Paragraph 8 cannot be construed to deprive the employee of his bonus in the event of a strike, because it is well settled that an employee out on strike is still considered as an employee of the company.

N. L. R. B. v. Mackey Radio & Telegraph Co., 304 U. S. 333;
Stewart Die Casting Corp. v. N. L. R. B., 114 Fed. (2d) 849.

We suggest that the true test as to whether or not this individual contract contains any restriction upon an employee's right to strike or engage in concerted activity is whether or not the company would be sustained in making any such contention in litigation with the employee. If an employee holding one of these contracts should go out on strike, or should join a union and engage in collective bargaining, would the company have any legal right under this contract to deprive the employee of

his bonus, or to terminate his employment for any such reason, disregarding the provisions of the Act? If the company should make any such contention in this or any other Court, it would undoubtedly be told that it had no such right. If this Court would so construe the contract in litigation between the two parties to the contract, certainly it should receive the same interpretation in this present litigation between the employer and a stranger to the contract. Furthermore, it should be noted that the Company has never at any time, under any circumstances, contended that under the terms of these individual contracts it has the right to terminate the employment of or deny the bonus to an employee who goes out on strike or engages in any other concerted activity.

In this connection it should be borne in mind that the right of freedom of contract is a right not only well recognized, but well protected by law, and reasonable contracts, which do not violate any provision of the law on public policy, will be recognized and upheld by the Courts. This Court, in the case of **N. L. R. B. v. Columbian Enameling & Stamping Co., Inc., 96 Fed. (2d) 948**, expressly said, l. c. 953:

> "No foundation more secure and reassuring or more protective of the rights of both labor and capital can be found than that **reasonable contracts, not violative of public policy,** should be respected by the parties who pledged their words and their integrity to abide by their terms. We grope only in darkness and trek further into the wilderness of confusion and lost landmarks if we lose sight of this beacon light. Progress lies only in respect for one's agreement. Respect for and support of the cause of labor follows labor's respect for its contract. The same Bill of Rights which through one section gives just protection to labor, through another section protects the just rights of others. Overriding one will result in the overthrow of the entire Bill of Rights."

And the policy of the Courts is, and, of course, should be, to seek a way to maintain and enforce contracts rather than to enable the parties to escape from their obligations on the grounds of public policy. This principle has been

clearly stated in **12 American Jurisprudence 670** in the following language:

> "As the right of private contract is no small part of the liberty of the citizen, the usual and most important function of courts of justice is rather to **maintain and enforce contracts** than to enable parties thereto to escape from their obligations on the pretext of public policy, **unless it clearly appears that they contravene public right or the public welfare.** Rules which say that a given agreement is void as being against public policy are not to be extended arbitrarily, because 'if there is one thing which more than another public policy requires it is that men of full age and competent understanding shall have the utmost liberty of contracting, and that their contracts, when entered into freely and voluntarily, shall be enforced by courts of justice.' **The paramount public policy is that freedom to contract is not to be interfered with lightly. It is the court's duty to sustain the legality of a contract in whole or in part whenever it can do so.**"

We submit that there is no escape from the conclusion that the individual contracts are legal and valid in every respect, contain no provisions repugnant to the National Labor Relations Act, do not restrict an employee's right to strike or engage in concerted activities, and are binding upon employer and employee.

(d) **The purpose of the Company in reintroducing and using the Individual Contracts.**

Finally, in this connection, the Board finds that the company reintroduced the individual contracts and thereafter used them because of a desire to accomplish a restrictive effect on organizational activity and with the purpose "to forestall union activity among the respondent's employees and to create a permanent barrier to union organization among them" (Supp. p. 20). To support this finding the Board points merely to the fact that "The contracts were introduced by the respondent in 1933 when the question of union organization was being actively discussed by employees in the plant following the passage of the National Industrial Recovery Act, with its guar-

anty of employee freedom in union activities" and to the further fact that "This was preceded by or coupled with a suggestion by Vice-President Olin to the employees that they form an employee representation plan similar to the plan in effect at the respondent's New Haven plant."

As we have already pointed out, there is no evidence in the record to show whether the question of union organization was being actively discussed by employees in the plant before, after, or simultaneously with the reintroduction of the individual contracts. They both occurred in the same year, but beyond that the record is silent. The Board assumes (1) that the individual contracts have a restrictive effect on organizational activities, and (2) that the company desired to accomplish that effect. That the first assumption is without any foundation is clearly shown by the course of events since the reintroduction of the individual contracts. They have not had the slightest restrictive effect on organizational activities, and there is no evidence in the record from which any such conclusion could be drawn. In 1937 more than 85 per cent of the Company's employees organized, on their own initiative, into a legitimate labor organization, and the individual contracts, instead of restricting organizational activities, actually tended to spur them on, as will be more specifically pointed out later. During the first half of the year 1941 the Company's Smokeless Powder Division was thoroughly and efficiently organized by the A. F. of L. without the slightest interference because of the individual contracts. Since then thousands of the Company's employees have signed up with either the A. F. of L. or the C. I. O., now District 50 of the United Mine Workers of America, and the individual contracts have had no effect upon the organizational activities of either the employees themselves or of the outside organizers. If there is any evidence in the record that the individual contracts have had any restrictive effect whatsoever on the organizational activities of any group of employees, we have been unable to find it.

Nor is there a scintilla of evidence that the Company had any desire to accomplish any such restrictive effect. If the Company had any such desire, it certainly gave it no outward expression, and it was certainly not fulfilled.

As for the suggestion made by Mr. Olin to the employees

that they form an employee representation plan, we might ask, Well, what of it? There was no reason why he should not make such a suggestion, since there was nothing in any law in effect at that time or since prohibiting such suggestions being made by an employer to his employees. On the contrary, there was every reason why he should make the suggestion, and note that it was nothing more than a suggestion, since a similar plan was working satisfactorily to both the company and the employees at the New Haven plant, and it appeared to offer a solution of the problem at the East Alton plant. In any event, the suggestion was not adopted by the employees and we think it indicative of the company's actual policy that no coercion or pressure was used to try to get the employees to accept a plan which didn't appeal to them.

The Board's findings in this connection come down to this: Because the individual contracts were reintroduced in the same year during which the question of union organization was being discussed by employees in the plant, and because, either before or after the reintroduction of the individual contracts, Mr. Olin made a suggestion to the employees that an employees representation plan be adopted, which suggestion was not accepted, the reintroduction of the individual contracts must have been made with some ulterior motive, although the evidence as to the actual motive was in the record and was uncontradicted. While the Board may have suspected such thing, the law will not permit such suspicions to be raised to the dignity of findings, which must be supported by substantial evidence.

N. L. R. B. v. International Shoe Co., Inc., 116 Fed. (2d) 31;
Appalachian Elec. Power Co. v. N. L. R. B., 93 Fed. (2d) 985, 989;
Ballston-Stillwater Knitting Co., Inc., v. N. L. R. B., 98 Fed. (2d) 758;
Martel Mills Corp. v. N. L. R. B., 114 Fed. (2d) 624.

2. **Formation and Recognition of the Independent.**

The Board's findings and conclusions with respect to the formation and recognition of the Independent relate to (a) the fact that General Manager Bassett did not object,

(b) the position taken by J. M. Olin in conversation with Otis Sullivan and correspondence with George H. Williams, the company's attorney, (c) the signing of the Basic Agreement, and (d) the fact that the company refused to execute a written working agreement.

Considering these findings in turn—

(a) **The fact that General Manager Bassett did not object.**

There is no dispute about the fact that the Independent was formed by a group of nonsupervisory employees of the company. It was their own idea, and even the Trial Examiner in his Intermediate Report expressly found that "The record fails to reveal that the respondent instigated its formation." Overwhelming evidence was offered to show the actual circumstances under which the Independent was formed, and absolutely no evidence was offered showing, or tending to show, or from which even a suspicion could properly be drawn, that the company instigated its formation, directly or indirectly.

While the Trial Examiner found that there was no showing that the company instigated the formation of the Independent, the Board found that the company "dominated and interfered with the **formation** * * *" of the Independent (Supp. p. 38). While the Board does not expressly so state, it is made plain that the basis for this conclusion is the finding respecting Taylor's conversation with Bassett in which, according to the Board, "Bassett replied that the respondent **had no objection to such an organization** * * *" (Supp. p. 21).

We point out again how the Board has subtly but very definitely distorted the actual purport and intent of the testimony. Taylor's testimony as to his conversation with Bassett was as follows (Supp. p. 316):

> "Along in the early part of 1937, I believe, a number of the fellows around there seemed to think we ought to have a Union, and they didn't hardly have the nerve to go up to the office, was the biggest thing, and see just what slant the company was going to

take on it, so one day they said they would stand behind me if I would go up and lay the cards on the table with them, see just what was said, so I tried to see Mr. F. W. Olin, and he wasn't in, and I knew Mr. Bassett in the office, and he told me he could handle anything like that, **so I asked him if we organized one, would anyone be dismissed; he said no, and I asked him also if we had a Union would it handicap our little contract that we had with the company.**

Q. That is the individual contract?

A. Individual contract.

Q. Which has been already introduced here. Go ahead.

A. **He said no, he couldn't see where it could in any way interfere with them as long as we conducted ourselves without handicapping the company, kept ourselves within our rights, that they would not interfere with us.''**

Thus the actual evidence shows that Mr. Bassett answered Taylor's inquiry by saying that no one would be dismissed for organizing a union; that it wouldn't interfere with the individual contracts; and that so long as the employees kept themselves within their rights the Company would not interfere with them. Taylor further testified on cross-examination (Supp. p. 323):

"Q. Tell us what you said.

"A. Well, I told him it was going to be an employees' union of our own and I would like to know if there was going to be any objection to operating one, if any of us would lose our jobs, and if we could keep our contract that we had with the company that they sign every year. He said he didn't see why we couldn't have them, and that the company wouldn't bother us as long as we stayed within our rights.

"Q. Did he elaborate, state what he meant by keeping within your rights?

"A. The only elaboration that you could say he made was the fact that we shouldn't use our time around the plant, standing around congregating and talking about it and soliciting membership on the

property there. He said if that was done they would have to take measures about it, possibly.

"Q. Did he say anything else in that regard?

"A. I believe that is about all he told me then."

If Mr. Bassett had been forewarned of Taylor's visit, and had sought advice of legal counsel as to employees' rights under the Wagner Act, we fail to see how he could have given any better answers to Taylor than the ones he gave. He told him that the employees would not lose their jobs because they formed or joined a union; that it would not interfere with the individual contracts; that the Company would not bother the men as long as they stayed within their rights. If he had given any other answer, he would certainly have been guilty of violating the law by denying to the employees the rights accorded them under the Act.

But the Board takes this eminently proper answer given by Bassett to Taylor's inquiry, and finds, first, that "Bassett replied that the respondent **had no objection to such an organization** * * *," rather implying that the company approved it. Then later the Board takes the next step by finding that "The proposed organization was first discussed with General Manager Bassett, and it is clear that his **approval** of the idea spurred the formation of the Independent" (Supp. p. 35). The Board then goes on to find that "Bassett's assurance to Taylor that the latter could safely continue his activities on behalf of the Independent made it clear that the respondent was **in favor of** the Independent and **welcomed** its formation" (Supp. p. 35). Then, having built unwarranted inference upon unwarranted inference, the Board adds the finishing touch by finding "That the respondent favored the Independent because it would serve as a means of combating organization by an outside union and perpetuating the individual contract system is made apparent by subsequent events" (Supp. p. 35). Starting with Bassett's answer to Taylor, which was, in effect, that the company would not violate the law by depriving its employees of the rights guaranteed to them by the Act, the Board reaches the finding that Bassett gave his "approval" to the idea, next that the company was "in favor of" and "welcomed" the Independent, and finally arrives at the

ultimate conjecture as to why the company favored the Independent. **If there is any fact established by the overwhelming, uncontradicted evidence in this case, it is that the company had nothing whatsoever to do with the formation of the Independent.**

(b) **The position taken by J. M. Olin in conversation with Otis Sullivan and correspondence with George H. Williams, the Company's attorney.**

The Board next finds that when the Independent presented its demands to the Company "Olin made it clear to Sullivan that, before recognizing the Independent as a bargaining representative, the respondent would have to be assured that the Independent's constitution and by-laws would not affect the 'individual contractual relationship' existing between the respondent and the 'bulk' of its employees," and quotes from a letter written by Mr. Olin to Senator George H. Williams, attorney for the company, presenting the problem created by the union's demands and the existence of the individual contracts, and seeking his advice (Supp. p. 22). The Board finally concludes that "it is clear from the record that the respondent made acceptance of the individual contracts a condition precedent to bargaining with the Independent" (Supp. p. 36).

These findings, too, are utterly unsupported by any evidence in the record. Sullivan did not testify that Olin made it clear to him that the company would have to be assured that the Independent's constitution and by-laws would not affect the individual contracts. Certainly Olin did not so testify. The only conceivable basis for this finding is to be found, not in the testimony of any witness, but in the letter written by Mr. Olin to his attorney seeking legal advice on the subject.

Surely Mr. Olin's statement to Sullivan, at the very first meeting in discussing the problem created by the individual contracts, that it would **probably** be the Company's position that it would be necessary to **very carefully study** the constitution and by-laws of the Independent as related to or affecting the individual contracts will not support the Board's finding that "Olin **made it clear** to Sullivan that, before recognizing the Independent as a bargaining

representative, the **respondent would have to be assured** that the Independent's constitution and by-laws would not affect the 'individual contractual relationship' * * *." Nor is there anything in the letter from Olin to Williams indicating any improper position taken by the company or any significance which should be attached to that portion of the letter quoted in the Board's opinion. Mr. Olin, a layman, was presenting to his counsel the legal problem with which he was confronted and seeking his advice. He presented the problem, as a problem, far more ably than most lawyers could have done. He recognized and called attention to the fact that any action which might be taken in dealings between the Company and the Independent which might modify, alter or amend the individual contracts must be reflected in the individual contracts themselves. In other words, he realized that the Company and the union could not, by any agreement which they might make without the consent and approval of the individual contract holders, change the contractual rights then existing between the Company and the individual employees. And this very difficulty, pointed out in the portion of the letter quoted by the Board in its opinion, was later specifically recognized and provided for in the basic agreement which was prepared by the attorneys for the Company and the Independent. Neither Mr. Olin's act in recognizing and anticipating the legal problems involved, nor his act in seeking advice of counsel on the subject, constituted a violation of the Act or indicates any improper attitude on his or the Company's part. If anything, it indicates that the Company was not particularly welcoming or favoring the Independent.

We have here the rather anomalous situation that the Board is finding in one breath that Bassett's statement to Taylor that the Company would comply with the law and would not deprive its employees of their legal rights is considered improper because it favored the Independent, and Olin's statement to Sullivan that certain legal problems would have to be first solved is likewise improper because it does not favor the Independent. If there is to be any consistency in the Board's position on these points, then one or the other of these findings must go by the board.

(c) **The signing of the Basic Agreement.**

Before discussing the Basic Agreement itself some comment should be made with respect to the findings of the Board as to the circumstances under which it was signed. While the Board does not expressly so find, it implies that the Company forced the Basic Agreement upon the Independent, and with it the individual contracts, against the wishes and desires of the Independent.

These findings present a very distorted idea of what actually took place and are, in large part, utterly unsupported by any evidence in the record. Fortunately there is in the record documentary evidence which, supported and amplified by oral testimony, clearly shows just what did take place.

It should be noted that at the very inception of the idea of an Independent Union, one of the things which concerned the employees themselves, and not the Company, was the possible effect of the union upon their individual contracts. When Taylor approached Bassett he asked him specifically whether such a union would handicap the little contract they had with the Company, that is, the individual contracts (Supp. pp. 316, 323).

At the first meeting held between representatives of the Independent and of the Company, following the presentation of the Independent's demands, on July 29, 1937, the Independent stated that they represented the majority of the employees and demanded recognition. The Company insisted that evidence of such representation must be submitted by the Independent, which was done between that date and August 12, 1937 (Supp. pp. 251, 266-270).

Following the meeting with the representatives of the Company, the executive board of the Independent held a meeting on July 29, 1937, at which, according to the minutes (Intervenor's Exhibit No. 1) (Transcript of the Record Vol. VII), the following occurred:

> "The conference held with the Representative of the Western Cartridge Company was then discussed.
>
> "It was moved by Oliver Foster, seconded by Fred Plumb, that representative Virgil Keefe and Francis J. Manning, attorney for the Union, arrange for a conference with the attorney for the Western Cartridge

> Company for the purpose of drafting a working agreement. Motion carried."

Pursuant to these instructions, Mr. Manning, attorney for the Independent, attended a conference with Mr. Williams, attorney for the Company, and according to his own uncontradicted testimony went into that conference wanting to get two things, one, recognition of the Independent, and, two, preservation of the individual contracts, because all of the members of the Executive Committee of the Union were very definite in wanting the individual contracts retained. As a matter of fact, Mr. Manning felt that the employees were so anxious to keep the individual contract that it would hurt their bargaining position with the Company if they let the Company know how strongly the employees felt on this point (Supp. pp. 364-367, 376, 380).

A conference was held between the two attorneys, in the course of which a preliminary draft of the Basic Agreement was prepared. The record is not clear as to just which attorney actually wrote the first draft, but it appears to have been done jointly (Supp. pp. 368, 383). In any event, the record is clear that the final draft, as executed, was prepared by Mr. Manning, attorney for the Independent, and submitted to the Company (Supp. pp. 368, 377, 383). See also Respondent's Exhibit 28, letter of transmittal from Manning to Williams.

On August 2, 1937, a meeting of the representatives of the Independent Union was held at which, according to the minutes (Intervenor's Exhibit No. 1):

> "The attorney, Francis J. Manning, then made a report on a conference held with the attorney for the Western Cartridge Company."

At some time between August 2nd and August 6th another conference was held between the two attorneys, because the minutes of the meeting of the Independent's representatives held on August 6th, 1937, show (Intervenor's Exhibit No. 1):

> "The attorney, Francis J. Manning, then made a report on a conference held with the attorney for the Western Cartridge Company."

On August 10, 1937, a meeting was held between representatives of the Independent and representatives of the company, at which a draft of the Basic Agreement was submitted. Following this meeting, which took place at 4 o'clock in the afternoon, a meeting was held at 7:30 that night at the office of Mr. Manning, at which all of the representatives of the Independent Union were present, and at which, according to the minutes (Intervenor's Exhibit No. 1):

> "The Basic Agreement submitted by the Western Cartridge Company to the representatives of the Union, at a conference held at the office of the company on August 10, 1937, at 4:00 P. M., was then discussed."

Finally, on August 12, 1937, at a meeting at which the members of the Executive Board and the departmental advisory committeemen of the various divisions were present, it was decided to execute the Basic Agreement.

Certainly the record does not support a finding that the Company "**summarily** rejected the proposal for a working agreement and substituted its own ideas on bargaining in the form of the so-called Basic Agreement."

Finally the Board finds that the Basic Agreement "was never thereafter submitted to the membership of the Independent for ratification" (Supp. p. 24). The Trial Examiner found "The Basic Agreement was never submitted to the Independent's membership for ratification, in violation of a provision in the constitution that important agreements should be so submitted."

When the Company pointed out to the Board that the constitutional provision referred to by the Trial Examiner did not apply to the Basic Agreement, the Board amended the finding of the Trial Examiner by striking out the reference to the constitutional provision. But inasmuch as there was no requirement that it be submitted and no occasion to submit the Basic Agreement to the Independent's membership for ratification, this finding becomes utterly meaningless and without any significance on the question of Company domination and interference in connection with the formation and recognition of the Independent.

We do not believe that a great deal need be said regarding the terms of the Basic Agreement itself. In addition to recognizing the Independent, it recognized the existence and validity of the individual contracts, and, by implication, permitted the system of using them to be continued. If, as we have endeavored to point out above, these individual contracts are perfectly legal, valid and binding, and not repugnant to the Act, and if both the company and its employees desired their continuance, then there was no impropriety or illegality in so providing by contract.

Nor does the Basic Agreement improperly restrict or limit the scope of collective bargaining. It not only recognizes the Independent "as the sole bargaining agent under the National Labor Relations Act, with respect to all matters not covered by the contracts of employment," but it recognizes and deals with the problem presented by the existence of these outstanding contracts and the possibility that collective bargaining might touch upon the subject matter of such contracts. Both parties realized full well the fact that the company and the Independent could not, by any kind of collective bargaining, deprive any employee of his legal rights under his individual contract without that employee's consent, and so stated in the agreement. However, they did not exclude the possibility of collective bargaining with respect to such matters, but merely provided that any agreement changing or modifying the rights of employees under the individual contracts, which might be reached as the result of collective bargaining, should be recommended to the employee and should go into effect only when and if the individual employee should agree to such changes, and only with respect to the employees who should so agree. The company and the Independent were confronted with a legal dilemma and arrived at a reasonable, fair and perfectly legal solution which has worked out in actual practice, by having matters involving changes and modifications in the individual contracts arrived at by collective bargaining, submitted to and accepted by the individual employees.

We believe that the best answer which can be made to the charge that the Basic Agreement and the individual contracts limit or restrict the scope of legitimate collec-

tive bargaining is to say, "Let's look at the record." Because the record shows, beyond question, without contradiction, and in part by the testimony of the Board's own witnesses, that from the time the Independent was recognized down to and including the date of the hearing, and since, for that matter, the Company and the Independent have engaged, vigorously, continuously and successfully, in collective bargaining with respect to "rates of pay, wages, hours of employment, or other conditions of employment," in short, with respect to everything under the sun which could possibly be the subject matter of collective bargaining (Tr. pp. 399-433; Supp. pp. 252-9, 230-48, 210-30). Nor did the course of collective bargaining between the Company and the Independent always run smoothly. An examination of the record of these negotiations will indicate not only that the Independent did not hesitate to present and insist upon its demands, but on one occasion even went so far as to issue its ultimatum and fix the date for a strike vote by the membership if its demands were not met (Supp. pp. 73, 74). In the light of what actually transpired, there is simply no basis for the Board's finding, with respect to the Basic Agreement, that "This was not collective bargaining within the meaning of the Act."

The Board finds that when the company and the Independent executed the Basic Agreement, the agreement which gave the Independent exactly what it was demanding, they joined "in attempting to deprive its employees of their rights under the Act." The Board attempts to find support for this conclusion by the finding "that Local 22574, in the first contract it obtained after being recognized, provided that the individual contracts with employees in the Smokeless Powder Division be eliminated" (Supp. p. 36). Surely the Board is not so naive as not to realize that the objection to the individual contracts comes, not from the Company's employees, but solely from the professional union organizers. If there is anything that is clear on the record in this case, it is that the Company's employees themselves like the individual contracts and want to keep them. But it is one of the cardinal doctrines of labor union philosophy that no benefits should flow directly from an employer to his employees; they

must all come through the union. That is why all profit-sharing plans, employees' saving plans, pension schemes, bonuses or other similar arrangements are invariably either positively objected to or at the best unwillingly acquiesced in unless they are made part of a union collective bargaining agreement. That, of course, is the reason why the individual contracts in the present case are being attacked so bitterly. They give to employees an opportunity to accumulate savings, and particularly an opportunity to obtain an attractive bonus without imposing any onerous burdens or obligations on them. It would be a foolish employee who would not like the individual contract, and, in practice, it is only those who believe they are about to make a valuable invention who refuse to sign them. The contract with Local 22574, in accordance with orthodox union doctrine, merely substituted for the bonus given under the individual contracts, a substantially equivalent bonus given as a part of a collective bargaining agreement, but designated as an "accident reserve fund." That fact lends no support to the conclusion that the individual contracts themselves are either illegal or undesirable to the employees.

(d) **The fact that the Company refused to execute a written working agreement.**

The Board further finds that "the fact that the respondent failed for almost 4 years to conclude a formal working agreement with the Independent covering wages, hours, and conditions of employment" is a further indication of the company's domination of the Independent (Supp. p. 37). We are at a loss to understand what significance can be attached to the lack of a "formal" working agreement. Certainly there is nothing in the law which requires that the results of collective bargaining be expressed in a "formal" working agreement. The record, month by month, and year by year, as to the collective bargaining which was carried on between the Independent and the company is to be found in the testimony of George L. Dawson (Supp. pp. 252-260), the stipulated testimony of George L. Dawson (Supp. pp. 230-248), the testimony of Frank A. Schotters (Supp. pp. 210-224), and the stipulated testimony of Frank A. Schotters (Supp. pp. 224-230).

The Board has entirely overlooked the fact that the representatives of the company and the representatives of the Independent early adopted the practice of keeping written minutes of each of their meetings for the purpose of collective bargaining, and of having such minutes signed by both the company representative and the Independent's representatives (Supp. pp. 59, 222, 261). Thus there was a signed memorandum, formal enough to meet all legal requirements, of every agreement reached between the company and the Independent. This procedure was found to be eminently satisfactory in practice, and was worked out between the parties themselves without the aid or interference of lawyers or anyone else insisting upon a more "formal" procedure.

This record will also show that as early as July 30, 1940, two "formal" agreements with respect to matters usually found in working agreements were signed by the Company and the Independent (Supp. p. 247); that on January 10, 1941, at a time when but a single employee of the company had been approached by an A. F. of L. representative on the subject of organization (Supp. p. 53), at a meeting between representatives of the company and representatives of the Union, a committee was appointed to attempt to draw up an agreement acceptable to both the Union and the company, on an appropriate grievance procedure; and that at the following meeting, on February 27, 1941, when the A. F. of L. campaign was in its infancy, an elaborate formal agreement (Supp. pp. 554-558), providing a procedure for the handling of grievances, a procedure for the calling of collective bargaining meetings, and prescribing the conditions under which union representatives might leave their work during working hours, was accepted and signed by both parties (Supp. p. 212). This finding of the Board, if upheld by the Courts, would in effect write into the law a provision that a Company and a union, in arriving at an agreement as a result of collective bargaining, must embody such agreement in formal document or run the risk of the union being charged with company domination. Such a ruling would be a boon to the legal profession, but would hardly expedite the process of normal collective bargaining.

In connection with these various findings, note their utter inconsistency. When Bassett is asked by Taylor whether or not the company will violate the law by discriminating against the employees if they form a union and he answers in the negative, that is found to be evidence of Company approval of and favoritism toward the Independent. When Olin, instead of immediately recognizing the Independent, points out to Sullivan the problem created by the individual contracts and postpones a definite answer until he can seek legal advice, that is found to be evidence of Company domination. When the Company signed the Basic Agreement, that, strangely enough, was found to be both favoritism toward and domination of the Independent; favoritism because the company was "entirely willing to, and did, grant recognition of a kind to the Independent," but domination because the company "summarily rejected the proposal for a working agreement and substituted its own ideas on bargaining in the form of the so-called basic agreement." Finally, when the Company and the Independent worked out an arrangement satisfactory to them and entirely adequate for the purpose of making a record of the agreements at which they arrived as a result of collective bargaining, the Board found that such practice was evidence of illegality because not "formal" enough to meet the Board's unwritten standards. In short, whatever the Company did in its dealings with the Independent was, ipso facto, wrong.

We respectfully submit that such findings, unsupported as they are, are not of sufficient dignity to support a decision condemning the Company as having violated the Act in connection with the formation and recognition of the Independent. On the record as made it is impossible to support any finding except one to the effect that the Company had nothing whatsoever to do with the formation of the Independent, and that in recognizing it it did nothing more, and nothing less, than the law directed and good faith and common decency in dealing with its employees required.

3. Encouragement of the Independent and Discouragemen of the A. F. of L.

The Board's findings and conclusions with respect to the alleged encouragement of the Independent and discouragement of the A. F. of L. relate to (a) organizational activities on company time and property, (b) a statement made by foreman Robertson to employee Bunzy, (c) a Christmas bonus given to the employees in the year 1940, (d) agreements for the casting shop and brass mill made in March, 1941, (e) alleged statements made by two supervisory employees to Elliott, an employee on the "Western side," (f) alleged statements made by several supervisory employees to employees in the Smokeless Powder Division, (g) a request to the Independent to intervene in a bargaining unit hearing, (h) the recognition of wage assignments for the payment of Independent Union dues, (i) the signing of a working agreement on June 4, 1941, without proof of majority, (j) the efforts of the Company to obtain a Court review of the Board's decision that the Smokeless Powder Division constituted an appropriate bargaining unit, and (k) further organizational activities of the Independent on company property and time.

Considering these findings in turn—

(a) **Organizational Activities on Company Time and Property.**

The Board found that "at all times since its inception in 1937, the Independent, without objection by the respondent, has engaged in organizational activities on company time and property." This finding, as far as it goes, is almost entirely true. While Bassett did say to Taylor that the men "shouldn't use our time around the plant, standing around congregating and talking about it and soliciting membership on the property there" (Supp. p. 323), and Day told Chapman not to solicit members on company time and property (Tr. p. 417), nevertheless, the evidence does show that the Independent did carry on its organizational activities on Company time and property, and the Company took no active steps to prevent such activities. But the Board fails to mention the un-

disputed fact, testified to by many of the Board's own witnesses, as well as by witnesses for the Company, that the Company likewise did not prevent the solicitation of membership in or other activity on behalf of the various A. F. of L. and C. I. O. unions (Supp. pp. 67-8, 85-6, 89; Tr. pp. 355, 667). The company has never had a rule prohibiting union activity during working hours and on company property so long as it does not interfere with the job (Supp. pp. 206, 524). And so long as equal opportunity was granted to the members of all unions, the failure to interfere with the activities on behalf of the Independent constituted no encouragement, support or domination of or interference with the Independent. **Ballston-Stillwater Knitting Co., Inc., v. N. L. R. B., 98 Fed. (2d) 758; Foote Bros. Gear & Machine Corp. v. N. L. R. B., 114 Fed. (2d) 611;** aff'd on reargument **121 Fed. (2d) 802; N. L. R. B. v. Mathieson Alkali Works, Inc., 114 Fed. (2d) 796.**

(b) **A Statement made by Foreman Robertson to Employee Bunzy.**

The Board finds that William Robertson, a pipefitter foreman in the maintenance or plant department, at some time during the year 1937, while the Independent was soliciting members, said to Francis Bunzy, an employee under him, "Well, you would get farther with the Company with an independent union." The Board has seen fit to believe Francis Bunzy, an ex-jailbird, instead of Robertson, a reputable citizen. But we point out that Robertson did not go out of his way to encourage independent unions in general or the Independent in particular, or to discourage any other union, but, according to Bunzy's own testimony, made the statement, if he made it at all, only in answer to Bunzy's remark that "We ought to have an outside union if we are going to do anything" (Supp. p. 66). **Furthermore, we point out that this single remark attributed to Robertson is absolutely the only evidence offered by the Board of any interference by any supervisory employee in favor of the Independent or against an outside union from the time the Independent was formed in 1937 until some time in the year 1941.** In other words, a single remark attributed to a single employee, engaged

on the lowest level of supervision, over a period of approximately four years, is seized upon by the Board as being a statement of company policy, and, combined with Bassett's statement to Taylor, discussed above, as making it "clear that the respondent was in favor of the Independent and welcomed its formation." Clearly Robertson's statement, if made at all, is nothing more than an expression of his own opinion as to which method of collective bargaining would be most successful, and could not have been accepted by the employee to whom it was made as anything more. Certainly it had no effect of encouraging the Independent or of discouraging the A. F. of L., because, as the Board itself points out, Francis Bunzy later joined Local 22574, and became its President.

(c) **A Christmas Bonus given to the Employees in the year 1940.**

The Board finds that the company supported and encouraged the Independent and discouraged the A. F. of L. in that "In the latter part of December, 1940, when the Independent's membership was declining and the A. F. of L. was making plans to organize the plant, the respondent arranged for the Independent's receiving credit for obtaining a bonus increase which the respondent had unilaterally decided to give employees having individual contracts" (Supp. p. 37). This finding is a little more carefully phrased than that of the Trial Examiner, who found in his Intermediate Report that "The respondent posted the notice of a bonus increase in order to strengthen the Independent as against the A. F. of L."

Now the fact is that upon the Board's own testimony there could not conceivably be any connection between the giving of the 1940 bonus and the activities of the A. F. of L. The record is silent as to the exact date on which the bonus was offered by the Company and the exact date on which public notice was given to the employees. It does appear that it was some time before Christmas, 1940 (Supp. p. 61). The Examiner assumed that activity on behalf of the A. F. of L. had already commenced and had been brought to the attention of the company at the time the bonus was given, and that, therefore, the bonus

was given because of such activity. The Examiner overlooked the fact that Fred Olds, organizer for the A. F. of L., who organized Local 22574, who signed the charges in this case, and who appeared at the hearing on behalf of the A. F. of L. and its affiliated organizations, testified, as a witness for the Board, as to just when his organizing activities with respect to the Company's employees commenced. He testified that such activities began along in the latter part of December, when he "met with one individual at that time," and that "There was no further activity until in January, about the middle of January, 1941, when I met with Francis Bunzy and Emmert E. Anderson" (Supp. p. 53). The Board changes the Examiner's finding that the bonus was given "in order to strengthen the Independent as against the A. F. of L." to a finding that it was given "when the Independent's membership was declining and the A. F. of L. was making plans to organize the plant." Now certainly there is no significance to be attached to the fact that the A. F. of L. was making plans to organize the plant at the time the bonus was given, unless there was some connection between the two facts, i. e., unless the plans of the A. F. of L. were known to the Company, and were a factor taken into account by the Company in the granting of a bonus. But the record not only utterly fails to show that the Company had any knowledge of the plans of the A. F. of L., but also fails to show that it even knew that Mr. Olds had talked to one of its employees, or that if it had had any such knowledge, its action would have been any different.

The actual circumstances surrounding the giving of the 1940 bonus were clearly shown, in part by documentary records, and in part by oral testimony, and there is no occasion for any fanciful speculations as to possibly a connection between the plans of the A. F. of L., which were certainly not communicated to the Company, and the granting of the bonus. On November 2, 1940, according to the signed minutes, a meeting was held between representatives of the company and representatives of the Independent, the purpose of which was to discuss and ask the company's consideration of granting a general increase in wages to all employees. In response to this

demand Mr. Bassett stated that the company would not grant a general increase, but if the bracket rates were out of line the company would check on them. At this meeting it was agreed by the company and the union that each union representative should in turn work with Mr. Haddleton with bracket rates in his division and attempt to effect changes in the brackets that he thinks are out of line (Supp. pp. 211, 60). Following this, sometime before Christmas, the Company made a counter-proposal to the Independent Union, of a 2 per cent bonus. According to Aughenbaugh, the Board's own witness, the Independent was demanding a general wage increase, the Company offered a 2 per cent bonus, to which the Independent at first objected as being insufficient, but later accepted as being the best it could get at the time (Supp. pp. 64-5).

The Board's witness, Aughenbaugh, had great difficulty making up his mind whether it was Mr. Bassett or Mr. Dawson who made the statement which the Board attributes to Mr. Bassett. The Board finds that Bassett stated that "If a notice was posted in the plant giving the Independent credit for this increase, it would 'bring the (Independent) membership up, showing that the union was trying to do something for members in the union * * *'" (Supp. p. 26). The Board then found that "Bassett did not testify concerning this incident."

Again we have one of those subtle distortions of the actual testimony. What Aughenbaugh actually testified to was that "The way it was Mr. Bassett left the meeting right away on business, and I think Mr. Dawson took over the meeting from there on; and **they** seemed to think if we got credit for the two per cent bonus that was given out it would bring our membership up, showing the union was trying to do something for members of the union, and if the union got credit for it it would build our membership up" (Supp. pp. 57-8). Note that while the witness says Mr. Bassett left right away and Mr. Dawson took over and "they" seemed to think that it would be helpful for the Independent to get credit for the bonus, the Board attributes the statement to Mr. Bassett, who did not testify, instead of Mr. Dawson, who did testify, and who denied any such statement having

been made (Supp. p. 283). Note also the testimony of Aughenbaugh as it immediately follows the portion above quoted:

"Q. (By Trial Examiner Ruckel) Who made that suggestion? Whose suggestion was that?

A. Sir?

Q. This suggestion was made at this meeting, is that right?

A. Yes.

Q. That if the union were to be given credit for the two per cent bonus it would help strengthen the union. Whose suggestion was that?

A. **I guess it was the Company,** which Mr. Bassett was superintendent of at the time.

Q. Which person there made the suggestion? What individual or what persons?

A. Mr. Bassett. He was the head of the meeting starting out, so he would be the one to make the suggestion.

Q. Not necessarily. Did he make the suggestion or did some other person present make it?

A. Mr. Bassett made the suggestion of two per cent bonus.

Q. What did he say when he made the suggestion?

A. He wanted to know what Mr. Chapman and myself thought of it" (Supp. p. 58).

Note that the witness could be made to say only that Mr. Bassett made the suggestion of the two per cent bonus, but he could not be made to say that Bassett suggested that if the Independent were to be given credit it would help strengthen the union. On cross-examination Aughenbaugh definitely attributed the statement not to Mr. Bassett, but to Mr. Dawson:

"A. He thought that would help us out. Mr. Bassett left the meeting before it was all over with, and Mr. Dawson took over then from then on.

Q. He said he thought that two per cent bonus would help the union increase membership?

A. If the independent union got the notice up first. **Mr. Dawson made the statement**" (Supp. p. 63).

* * * * * * *

"Q. Who was present when Mr. Dawson was supposed to have made that statement? Was Mr. Chapman there?

A. Yes" (Supp. p. 63).

* * * * * * *

"Q. You say when Mr. Dawson made this remark there was not anybody present but you and Chapman?

A. That is right.

Q. Did you go and tell Mr. Harting about Mr. Dawson making that remark?

A. They found it out before we got to them" (Supp. p. 64).

* * * * * * *

"Q. I say did you tell him Dawson made the statement that ought to help increase your membership?

A. Yes, sir" (Supp. p. 64).

While the Board says that it gives credence to and accepts Aughenbaugh's testimony, it does not accept his testimony as shown by the record. In order to be able to give credence to Aughenbaugh's testimony it appears to have been necessary for the Board to find that it was not contradicted by Bassett. But, when pinned down on cross-examination, Aughenbaugh himself stated that it was Dawson and not Bassett who is supposed to have made the objectionable statement, and Dawson did testify and positively and unequivocally denied that there was any such statement made.

On the record as made there is no evidence to support the finding that the 1940 bonus was given in order to encourage the Independent and discourage the A. F. of L.

(d) **Agreements for the Casting Shop and Brass Mill made in March, 1941.**

The Board finds that "Shortly after Local 22574 had demanded bargaining rights for employees in the smokeless powder division, and **when it appeared likely that the A. F. of L. would extend its campaign to the western side,** which it subsequently did, as pointed out below, the re-

spondent took further steps to strengthen and support the Independent. On March 18, 1941, the respondent granted the Independent its first written working agreements. One was made for the casting shop and another for the brass mill" (Supp. p. 27). Again the Board concluded (Supp. p. 37) that "In the early part of 1941, after the A. F. of L.'s campaign had made substantial progress in the smokeless powder division, the **respondent sought to prevent the spread of its influence to the western side** by giving the Independent working agreements covering the brass mill and the casting shop."

Not only was there no evidence in the record to support the finding that there was any connection between the demand of Local 22574 over in the smokeless powder division and the agreements made for the cast shop and brass mill, nor any evidence that on March 18, 1941, it appeared likely that the A. F. of L. would extend its campaign to the western side and that the Company sought to prevent the spread of the influence of the A. F. of L. to the western side by giving the Independent working agreements covering the brass mill and cast shop, but the attorney for the Board, at the hearing before the Trial Examiner, did not offer these working agreements on that theory, or contend that any such inference could be drawn from them, but offered them solely on the theory that they showed that the Independent took an inconsistent position with respect to the appropriate bargaining unit (Tr. p. 379).

And the Trial Examiner admitted the contract itself merely on the theory of showing what contracts are in force between the Independent and the Company. It was never contended or even suggested at the trial that there was any connection between the agreement in the cast shop and rolling mill and the activities of the A. F. of L. over in the Smokeless Powder Division, perhaps a mile away. Since it was not so contended, the company naturally made no effort to offer any testimony to establish the fact that there was no connection between the two matters.

While the issue was not presented below, sufficient facts with respect to the circumstances under which the agreements of March 18, 1941, were executed, do appear in the record to make it clear that the shop agreements made

for the casting shop and brass mill have absolutely no connection with the demand of Local 22574 for recognition or the alleged rivalry between the Independent and Local 22574. In the first place, the evidence affirmatively shows that there was no rivalry between the Independent and Local 22574, particularly as to the casting shop and the brass mill. Local 22574 had and claimed no jurisdiction over and was not attempting to organize the employees in the casting shop or the brass mill (Tr. pp. 42-43). Its jurisdiction and activities were confined to the Smokeless Powder Division, and the Board's own testimony shows that the Independent had few members in the Smokeless Powder Division, did not contest the claim of Local 22574 to represent said Division, and expressly waived any such claim on its part. Not only was Local 22574 not claiming any jurisdiction over or engaged in any activity in the casting shop or brass mill, but the record is clear that no other union was making any such claim or engaging in such activity (Tr. p. 45; Supp. p. 73). Activities on behalf of the A. F. of L. did not commence in the brass mill and cast shop until April or May of 1941 (Tr. p. 45). The casting shop and brass mill are located on the so-called "Western side." The Board has already found that the Smokeless Powder Division is separated from the rest of the plant by a river, road and fence. The cast shop and brass mill have their own supervisory forces, who have no connection whatsoever with the supervisory forces of the Smokeless Powder Division. There is nothing in the record to justify the surmise that there was any connection whatsoever between the granting of the shop agreements on March 18, 1941, in the casting shop and brass mill and the activities on behalf of Local 22574 over in the Smokeless Powder Division, perhaps a mile away. There is clear, reasonable, logical and uncontradicted evidence in the record as to the reason why the shop agreements were granted in the casting shop and brass mill. P. W. Day became superintendent of the brass division (which included the casting shop) on February 1, 1941 (Supp. p. 91). At that time he found considerable

dissatisfaction among the employees and set about to eliminate the causes of any grievances (Supp. pp. 92, 93-95). The agreement in the casting shop covered a total of from 80 to 120 employees (Supp. p. 113), and the agreement in the rolling unit of the brass mill covered in the neighborhood of 50 persons (Supp. p. 114). It is far more reasonable to believe that Mr. Day made these two shop agreements for the purpose of eliminating causes of dissatisfaction in the casting shop and rolling unit of the brass mill, than to assume that they were executed for the purpose of discouraging Local 22574 over in the Smokeless Powder Division, or preventing the A. F. of L. from spreading its influence to the Western side. It is difficult to see how the Company could intelligently assume that, by giving these shop agreements covering from 130 to 170 employees, in the aggregate, out of a total of some 6,500, it could hope to materially affect the activities of the A. F. of L. or decrease its influence among its employees.

(e) **Alleged statements made by two supervisory employees to Elliott, an employee on the "Western side."**

The Board next finds that McCauley, a Personnel Supervisor, and P. W. Day, Superintendent of the Brass Mill, made various statements to the employee William Elliott to the general effect that he should get behind the Independent and put it over.

McCauley had resigned from the Company, moved to the Detroit area, and was out of reach so far as the Company was concerned, and hence could not be produced to deny the statement attributed to him (Supp. p. 493).

As for the statements attributed by William Elliott to P. W. Day, it is apparent that the Board misconceives the effect of the testimony not only of P. W. Day but also of William Elliott himself (Tr. pp. 480-525; Supp. pp. 91-128). It is fairly obvious that when P. W. Day took charge of the casting shop and brass mill on February 1, 1941, there was certain dissatisfaction among the employees in those departments. It is of no concern for present purposes whether such dissatisfaction was well founded or not. In any event, Day set out to remove any causes for such dis-

satisfaction in so far as it was within his power to do so. He called in Elliott, an outspoken critic of the management, and asked him what complaints the men had and then set about in good faith to do his very best to satisfy them. When Day took charge he found the Independent as the recognized and accredited representative of the employees with whom he was supposed to deal. The Independent was the recognized bargaining agent for all of the production and maintenance employees of the plant. He had no right, power or jurisdiction to attempt to change this arrangement. He set to work with the tools he had at hand in an effort to solve the problems in his particular department. Elliott was the representative of the Independent in the casting shop and, as such, it was Day's duty to deal with him. Day attempted to deal with him and through him to satisfactorily dispose of any grievances which the men might have. Elliott refused to co-operate in presenting grievances, as it was his duty to do, but, on the contrary, represented to the men that the Company did not intend to live up to the shop agreements of March 18, 1941, and did not intend to play fair with the men in any respect, but intended to rob and cheat them in every way it could. Day was not concerned with the Independent as such. It was a matter of indifference with him whether he dealt with the men in his department through the Independent, through the A. F. of L., through the C. I. O., through a shop committee, or individually without any union. His real concern was with the proper and efficient operation of his department, and the only way which was presented to secure such operation was to eliminate any causes of dissatisfaction on the part of the men by dealing with them through their accredited representative. We submit that anyone reading the testimony of both Elliott and Day with an open and unbiased mind will be driven to the conclusion that, in his discussions with Elliott, Day was attempting to improve conditions in his shop, and not to interfere with the affairs of the Independent or the A. F. of L.

In this connection we believe it significant that William Elliott was the only employee out of the 6,500 on the Western side to whom the Board has found that, from 1937

down to the date of the hearing in December of 1941 and January of 1942, any supervisory employee had ever said anything in favor of the Independent or derogatory to the A. F. of L. This case was carefully prepared by the representatives of the Board. They went over the evidence with a fine-tooth comb and presented everything which might, by any stretch of the imagination, tend to show that the company had interfered with the affairs of the Independent. That they can find but one employee out of 6,500 to whom any such statement has been made by supervisory employees is eloquent testimony of the fact that the Company did not interfere as charged.

(f) **Alleged statements made by several supervisory employees to employees in the Smokeless Powder Division.**

Next the Board, following its own immutable law that as between an ordinary employee and a supervisory employee the testimony of the ordinary employee must always be believed, finds that six supervisory employees in the Smokeless Powder Division made statements to employees in that division, during the year 1941, discouraging the employees who were desirous of being represented by Local 22574. These alleged statements range from remarks to the effect that it was not a good idea for a foreman to wear a union button, and "I can't tell you not to belong (to the A. F. of L.) and I can't tell you how to vote (in the coming election)," to statements that the Company did not want foremen to belong to the union. Some of the statements were attributed to foremen who were themselves eligible for membership in Local 22574, namely, Pivoda and Canhan. Others were alleged to have been made to men who were themselves supervisory employees, namely, McPherson and Gent. Another, the statement attributed to foreman Schindel by employee Eldon Weishaupt, is not even supported by Weishaupt's own testimony.

Taken all in all, these statements were nothing more than the kind which would naturally be expected to be made in casual conversations during the course of an active organizational campaign. No company with a large number of supervisory employees can hope to be 100 per

cent successful in preventing some of them from expressing their opinions, and on June 30, 1941, this Company had 353 supervisory employees (Supp. p. 207). Even if we grant that the Board has the right to find that McPherson is a credible witness and is to be believed despite the fact that his testimony has been refuted by three separate supervisory employees, there is no escape from the fact that all of the statements put together are unsubstantial and inconsequential in so far as the question of the alleged Company domination of the Independent is concerned.

As has been pointed out, at the time these statements are alleged to have been made the Independent had been functioning as a collective bargaining agent for nearly four years. It had been formed on the employees' own initiative, without the instigation, aid or assistance of the Company. Upon procuring more than 85 per cent of the Company's employees as members, it was duly recognized by the Company. It served its functions and performed its duties as collective bargaining agent faithfully and successfully. During all of these years there is absolutely no evidence in the record of any Company support or interference with its administration. It had few members in the Smokeless Powder Division, and expressly waived any interest in the bargaining unit. It was not competing with Local 22574 in the Smokeless Powder Division, and Local 22574 was not competing with the Independent on the Western side. Every one of the statements referred to above were made by supervisory employees in the Smokeless Powder Division to employees employed in that division. If made at all, they were made with reference to Local 22574. If any such statements discouraged the A. F. of L., it was Local 22574 alone which was discouraged. There is no possible doubt about the question that, if the statements were intended to discourage Local 22574, they did not have that effect. There is no evidence in the record that any single employee was prevented from joining Local 22574, or, after joining, was persuaded to resign or cease his activities on behalf of the union. Nor is there any evidence in the record that any of the statements actually served to encourage the Independent or to persuade any employee to join or become active on behalf of the In-

dependent. Even if, under all of the evidence, it could properly be held that the Company did discourage Local 22574 by the making of any statements derogatory to it, such discouragement could not be deemed to constitute domination of, or interference with the formation or administration of, the Independent, or the contribution of financial or other support to it. At the most, such discouragement of Local 22574 might be deemed a violation of Section 8 (1) of the Act. It could not be deemed a violation of Section 8 (2). It might support a cease and desist order. It could not support an order of disestablishment of the Independent.

(g) **A request to the Independent to intervene in a bargaining unit hearing.**

The Board next finds that the Company urged the Independent to intervene in a representation proceeding which took place in the spring of 1941, notwithstanding the fact that the Independent had previously disclaimed any interest therein (Supp. pp. 32, 38). Whatever the company may have attempted to do in this connection, the fact remains that it was utterly unsuccessful. The Independent did not intervene in the representation proceeding, but stood upon its waiver of any claim to representation in the Smokeless Powder Division. Despite the fact that the Company objected most strenuously to having its plant split up into a number of separate bargaining units, instead of being treated as a single unit, the Independent stood on the side lines and did not join in fighting the Company's battle. If this fact proves anything, it proves that the Company not only did not, but could not, dominate the Independent, and not only did not, but was unable to, interfere with its administration.

Again we have another illustration of the inconsistent positions which the Board has taken in this case. As pointed out above, when the Company refused to illegally interfere with the organization of the Independent, that fact was found to be evidence of company domination. And when the Company refused to give the Independent the working agreement which it demanded in 1937, that too was evidence of Company domination. This time the

tables are turned; the Board finds that the Company requested the Independent to do something for it, and the Independent refused, but instead of carrying on to the logical conclusion and saying that that fact tends to show that the Independent was independent in fact as well as in name and was not company dominated, the Board, with consistency of purpose, if not of logic, says that that too is evidence of Company domination.

(h) **The recognition of wage assignments for the payment of Independent Union dues.**

The Board found that the Company supplied and honored wage assignments used by the Independent in having dues of members checked off by the Company (Supp. p. 25).

Again we have a finding which is true as far as it goes, but which in and of itself has no significance. The Company has supplied and honored wage assignments for dues and turned the money over to the Independent. These assignments are executed and handled in accordance with the laws of Illinois, and there is nothing in the Act prohibiting the practice. They are the same form and kind of assignments which are furnished by the Company to its employees and accepted and recognized for various purposes beside the payment of dues to the Independent (Supp. pp. 180-3). It does not constitute encouragement, support or domination of, or interference with, the Independent so long as the same privileges have not been denied to other unions, and the Company's testimony as to the offering of similar privileges to Local 22574 (Supp. pp. 196-198) was not only uncontradicted, but the Board expressly stipulated that the testimony was true and correct (Supp. p. 210). Since there was no discrimination with respect to the use of such wage assignments this finding must be eliminated as a basis for the conclusion that the Independent is Company dominated.

(i) **The signing of a working agreement on June 4, 1941, without proof of majority.**

The Board finds that the Company on June 4, 1941, without requesting or receiving any evidence as to the

Independent's representative status, concluded a working agreement with it (Supp. p. 32). Thus we have the Board finding, first, that the failure to conclude a working agreement with the Independent in the years 1937 to 1940, inclusive, is evidence of Company domination, and, second, the execution of the working agreement in 1941 is likewise evidence of Company domination.

In this connection it should be recalled that the idea of supplementing the Basic Agreement with formal working agreements between the Company and the Independent, goes back to at least May 3, 1940, when at a meeting between representatives of the Company and the Independent it was proposed that the Company submit at the next meeting "the proposed rules of procedure for union representatives and committeemen to follow in calling meetings with officials of the Company during working hours and for handling grievances through foremen, and department heads, and so forth" (Supp. p. 244). On May 17, 1940, "the proposed procedure for the handling of grievances and the calling of meetings was submitted by the Company and taken under consideration by the union's representatives" (Supp. p. 245). At a meeting on July 31, 1940, two agreements were signed by the Company and union representatives, one entitled "Conditions Under Which Union Representative May Leave His Work During Working Hours" (Board's Exhibit 12, Sheet 4) and the other, "Procedure to Call a Meeting for Collective Bargaining" (Board's Exhibit 12, Sheet 3) (Supp. p. 47). At a meeting between representatives of the Company and of the Independent on January 10, 1941, a committee consisting of representatives of the Independent and representatives of the Company was appointed to draw up a grievance procedure (Supp. p. 212) and on February 27, 1941, a draft of such grievance procedure was accepted and signed by both parties (Board's Exhibit 12, Sheets 1 and 2). Negotiations for the working agreement itself began in February, 1941 (Supp. p. 72), and were carried on energetically as will appear from the minutes of the Independent (Intervenor's Exhibit No. 1, Vol. 8, Trans. of Rec.) until the final draft was signed on June 4, 1941.

As for the Board's remark to the effect that the Com-

pany did not request or receive any evidence as to the Independent's representative status in connection with the signing of the working agreement it must be borne in mind, first, that the Independent left the impression with the Company that it represented a majority of the employees (Tr. pp. 265, 400) and, second, that there was then in effect a contract between the Company and the Independent by the terms of which the Independent was recognized as the bargaining agent for the Company's employees. No other union was claiming to represent any of the Company's employees except Local 22574 with respect to a small group over in the Smokeless Powder Division. Unless it had given notice of termination in the manner provided in the Basic Agreement the Company would not have been in a position to require proof of majority status.

(j) **The efforts of the Company to obtain a Court review of the Board's decision that the Smokeless Powder Division constituted an appropriate bargaining unit.**

The Board finds that the Company further discouraged Local 22574 by refusal to recognize it until induced to do so by the National Defense Mediation Board (Supp. pp. 33, 38).

As we have already pointed out, the Company was, and for that matter still is, convinced that the decision of the Board as to the appropriate bargaining unit was and is erroneous and desired to obtain a review by this Court of the decision. Under the Act no direct appeal is allowed to the Court, and the only manner by which a review could have been obtained was for the Company to follow the exact procedure which it did follow. **N. L. R. B. v. The Falk Corp., 308 U. S. 453; Cupples Company, Manufacturers, v. N. L. R. B., 103 Fed. (2d) 953; Pittsburgh Plate Glass Co. v. N. L. R. B., 313 U. S. 146; Marlin-Rockwell Corp. v. N. L. R. B., 116 Fed. (2d) 586.** The Company attempted, by denying recognition, to have the Board file with this Court its petition for enforcement in the manner provided by the Act, and, in that proceeding, thereby obtain its review of the bargaining unit decision. The purpose and intent of the action was explained fully to the

representatives of Local 22574 and their co-operation was requested. The Company offered to do everything within its power to expedite the proceeding and to obtain a decision without appreciable delay. Local 22574, instead of following the suggested procedure, took its case to the National Defense Mediation Board, which denied the Company's request for an opportunity to have its day in court and ordered the Company to recognize and bargain with the union, which the Company proceeded to do (Supp. pp. 189-201). It is a rather illuminating revelation of the Board's feeling toward court review of its decisions when the Board finds that an employer's bona fide efforts to obtain such court review in an expeditious manner constitutes discouragement of the A. F. of L. and a violation of the Act.

(k) **Further organizational activities of the Independent on Company property and time.**

Finally, the Board finds that, beginning in August, 1941, the Independent revived its membership campaign on the Western side and openly solicited membership applications and wage assignments on Company property and time (Supp. p. 34). What has been said above with respect to the Board's finding regarding such solicitation by the Independent in the year 1937 applies with equal force to the finding with respect to acts in 1941. The Board blandly ignores the fact that the undisputed evidence shows that the same privilege was accorded to the A. F. of L. (Supp. pp. 67-8, 85-6, 89; Tr. pp. 355, 667). There being no discrimination as between the Independent and the A. F. of L. in this respect, this finding too cannot be a basis for the ultimate conclusion that the Company dominated the Independent.

After reviewing one by one the Board's findings and conclusions with respect to the alleged domination of and interference with the administration of the Independent, and on the strength of which it finally issued its order of disestablishment, one fact stands out. And that is the fact that if the individual contracts are, as we believe, legal and proper, not repugnant to any of the provisions of the

Act, and were not used by the Company in an unlawful manner or for unlawful purposes, and if the discharge of William Elliott, more fully discussed hereafter, was nondiscriminatory, then there is nothing of any substance in the record in this case which would support the Board's Decision and Order with respect to the Independent Union. The Independent was conceived in the minds of the Company's nonsupervisory employees themselves. It was brought into being without any aid or assistance on the part of the Company. It grew and prospered and functioned for nearly four years, and during all of that time the evidence fails to show any improper act of interference or support of the Independent by the Company, unless the isolated act of a pipefitter foreman, Robertson, saying to an employee, Bunzy, in answer to that employee's remark, that the men would get farther with the Company with "an independent union" be deemed such. If we are correct in our analysis of the evidence as to the facts which occurred prior to the year 1941, and the status of the Independent when Local 22574 appeared on the scene, then the question arises as to whether the sporadic and isolated statements attributed to a few minor supervisory employees in the Smokeless Powder Division, derogatory to Local 22574, and which were made without the knowledge or solicitation of the Independent, should be held to be sufficient to destroy it. Without exception, the testimony of the very employees who charged the supervisory employees with the statements in the Smokeless Powder Division in 1941 at the same time established the fact that such statements had been utterly ineffective, that not one of them had changed his acts or conduct in any way, and that not one of them had joined the Independent because of any such statements, or had refrained from joining, or had withdrawn from Local 22574. None of the statements are alleged to have been made publicly or under circumstances whereby they would have influenced other employees, but all were alleged to have been made privately and only to the employees giving the testimony. No other employees were or could have been affected by such alleged statements.

To put it another way, in the light of the vast number

of employees who organized and joined the Independent of their own volition, and without any influence, coercion or interference on the part of the Company, and who obviously desired to retain their union, and in the light of the size of the Company's operations, the number of its employees, the number of its supervisory force, and the insignificant number, kind and character of instances of interference testified to, it must be concluded that if there was any technical interference in the year 1941 with the rights of the employees under the Act, it was unsubstantial and should not be made the basis for an order disestablishing the Independent.

We do not believe that there is any particular dispute as to the principles of law applicable to the question now before the Court. As for the contention that the act of the Company in permitting the Independent to solicit membership during working hours was an unfair labor practice, we call to the Court's attention the decision in the case of **Ballston-Stillwater Knitting Co., Inc., v. N. L. R. B., 98 Fed. (2d) 758** (Second Circuit), in which the Court said, l. c. 762:

> "A union limited to the employees of a single employer is as legal as any other, and we know of no rule of law that forbids the employer to permit his employees to solicit membership during working hours, provided he does not withhold a like privilege from the opposition and exerts no pressure upon employees to join the union."

With respect to the contention that the company's recognition of the Independent by the execution of the Basic Agreement in some way amounted to discrimination, we call to the Court's attention the case of **Cupples Company, Manufacturers, v. N. L. R. B., 106 Fed. (2d) 100** (Eighth Circuit), where the Court said, l. c. 114:

> "The evidence that the Company welcomed the organization of an independent union of its employees and preferred such a union to any other, and made haste to recognize the Association as the sole bargaining representative for all of its employes, is not a

sufficient factual basis for the finding of interference, domination and support. This for the reason that, while such evidence is consistent with the hypothesis that the formation and administration of the independent union was interfered with, dominated and supported by the Company, it is not inconsistent with the contrary hypothesis, and therefore supports neither. Gunning v. Cooley, 281 U. S. 90, 94, 50 S. Ct. 231, 74 L. Ed. 720; Stevens v. The White City, 285 U. S. 195, 204, 52 S. Ct. 347, 76 L. Ed. 699; Ewing v. Goode, C. C., 78 F. 442, 444; Eggen v. United States, 8 Cir., 58 Fed. 2d 616, 620."

As for the contention that the Independent, after years of independent and successful operation, should now be destroyed because of various statements alleged to have been made during the past year by a few minor supervisory employees out of an immense number of such employees, we call to the Court's attention the decision in the case of **NLRB v. Mathieson Alkali Works, 114 Fed. (2d) 796**, l. c. 802:

> "* * * **But mere isolated expressions of minor supervisory employees, which appear to be nothing more than the utterance of individual views, not authorized by the employer and not of such a character or made under such circumstances as to justify the conclusion that they are an expression of his policy, will not ordinarily justify a finding against him.**"

To the same general effect see the statement in the case of **NLRB v. Whittier Mills Co. et al., 111 Fed. (2d) 474** (Fifth Circuit), where the Court said (l. c. 479):

> "There was also evidence that a foreman, bantering with an employee under him, finally said: 'I would not belong to that old union; it causes lots of trouble. You know at the time of the strike over at Porterdale they lost a lot of jobs down there, and it caused them to be moved out.' The Board held these words were said seriously and implied a threat to this employee of loss of employment because of union membership. Also a 'second hand,' who substituted for the over-

seer when the overseer was off the job, said to another employee: 'What makes it so hard on the fellows here today is the way they are treated by this damned union.' **Isolated** speeches like these made by underlings, though having some authority, in casual conversation with fellow employees, which are not authorized or encouraged or even known to the management, ought not to be too quickly imputed to the employer as his breaches of the law. When not made in the exercise of authority, but in personal conversation, they do not appear to be the sentiments of the employer nor his acts, and to make them such the circumstances ought to show some encouragement or ratification or such repetition as to justify the inference of a policy which they express. On the other hand, the management might very well issue orders to all having any authority over other employees, that they shall say or do nothing respecting union affiliations. We are not impressed with the strength of these findings of interference, especially since the employees who tell of it seem themselves not to be at all impressed."

And even though such sporadic and occasional statements on the part of minor supervisory employees might justify a cease-and-desist order, nevertheless it is clear that they should not be made the basis for an order of disestablishment. This proposition was clearly decided in the case of **Humble Oil & Refining Co. v. NLRB, 113 Fed. (2d) 85** (Fifth Circuit), where the Court said (l. c. 88):

"'Dominate' is a strong word, meaning to master, to rule, to control. 'Interfere with' is a weaker and more extensive term, and may include any substantial intermeddling. It is fairly intended that an employer shall take no part in the original formation of a labor organization, or in the subsequent administration of its affairs, either by opposition or by any kind of support. If he does, a cease-and-desist order may be issued, and in some cases the Board may, as has been held, disestablish the organization. The Board cannot, however, prevent the same employees, acting freely and of their own choice, from immediately again

organizing themselves, and establishing if they wish the same constitution, and selecting the same persons to lead them. This is so because the Board is not made either guardian or ruler over the employees, but is only empowered to deliver them from restraint at the hands of the employer when it exists. If employer interference has been slight, and not coercive or oppressive, suppression of a majority organization whose members are not complaining of interference would be an extreme step. If the Board should order it under Section 10 (c) as 'affirmative action which will effectuate the policies of this Act,' it may be a question whether the court should hold such action not calculated to effectuate the act's true policies."

And, again (l. c. 92):

"But these incidents do not support the charge of dominating or interfering with the administration of the Federations. Each Federation had already been formed, and its majority status fixed by the elections. Unsuccessful meddling with union men had no deterrent effect on the administration of either Federation. It would be strange indeed if a labor organization, freely organized by a large majority of the employees, is to be destroyed whenever some well-wishing supervisor, contrary to his own duty and orders, says something in its favor. As we see it, the employees who freely formed these organizations have the right under the law to have them function. If the employer trespasses through his representatives, he and they ought to be stopped, but a more serious and demoralizing trespass than here appears is necessary to show such domination or interference or support as will justify annihilation of such organizations."

And finally we call to the attention of the Court the rule which the Supreme Court laid down for determining whether or not statements or acts of supervisory employees constitute interference. In the case **of NLRB v. Link-Belt Company, 311 U. S. 584,** the Supreme Court said (l. c. 599):

> "If the words or deeds of the supervisory employees, taken in their setting, were reasonably likely to have restrained the employees' choice and if the employer may fairly be said to have been responsible for them, they are a proper basis for the conclusion that the employer did interfere."

The best test for determining whether any of the statements attributed to supervisory employees in the present case were "reasonably likely to have restrained the employees' choice" is to examine the record and see what actually occurred. We believe that in almost, if not every, instance, the evidence of the very same employees who testified to the alleged statements by supervisory employees will disclose that their choice was not restrained in any respect whatsoever. They ignored the statements, alleged to constitute interference, and joined and participated in the activities of Local 22574. If there was any attempt to influence the actions of the Board's witnesses against Local 22574, it was utterly ineffective and futile.

In the light of all of the above, we respectfully submit that the Court should find that the Independent was and is independent in fact as well as in name, and has not been and is not now dominated in any respect whatsoever by the Company.

B. **The Alleged Discriminatory Discharge of William Elliott.**

We believe that the best and simplest answer to the findings of fact, conclusions and recommendations of the Board with regard to the discharge of William Elliott is to review the testimony which was offered by the Board and by the Company with respect to this matter. Such evidence will, we believe, clearly show that the Company was clearly justified in its discharge of this employee and that there is no substantial evidence in the record to support a finding that such discharge was made because of union membership or union activity.

(a) **The Board's Case in Chief.**

William Elliott testified on behalf of the Board, and **by his own testimony clearly and unequivocally demonstrated just why he had been discharged.** He testified that some time in July, 1941, he joined the A. F. of L.; that along about the first of July, 1941, he resigned from the Independent Union (Tr. p. 487); that he was elected Financial Secretary of the A. F. of L. Union on July 23, 1941; that at about that time he had a discussion with some foremen about a shift change; that the foremen told him that he was supposed to get a yes or no vote from the men, so he said, "Well, that is a poor way to vote." "If they wanted them to vote on it, why not let them vote in the proper manner? That is the kind of vote Hitler gave the Czechs when he took the country over" (Tr. pp. 491-492); that he told the foreman Carlton that the men lost money on the shift change (Tr. pp. 492-493); that the next day Carlton came up and said, "Hello, Bill, how are you?" And I said, "O. k. How are you?" He said, "I am mad as hell." I said, "What about?" He said, "You told the men up here that I said that the new schedule was losing money." I said, "Now, I am not sure that I said that, but," I said, "you don't deny it do you?" I said, "After all, it is true, isn't it?" Well, he didn't say whether it was or not. But he says that he didn't like to have me tell the men. "Well," I said, "I am not sure that I told them that you said that," "It is something or other," he says, "something else." And I says, "Maybe I did tell them. Even if I did," I said, "what of it?" (Tr. pp. 493-494); this was around the 22nd or 23rd of July (Tr. p. 494); that he was fired by P. W. Day on July 25th; that at the time he was fired he had a lengthy conversation with Day in which he told Day that he (Day) could not give the men a square deal (Tr. p. 499); that the Company had beat him and the other men out of a lot of money on the bonus system (Tr. pp. 500-501); that whenever he had a conference with the management he would like to have a lawyer around to kind of defend him (Tr. p. 501); that Day said that he was sorry to have to fire him, but that he had orders to do so (Tr. p. 501); that Day told him he could stop and see Haddelton, and he did so; that Haddelton said

there was nothing he could do (Tr. p. 502); that he then went to see Schotters, the General Plant Superintendent, and accused him of firing him for Union activity; that Schotters said, "I didn't know you belonged to the union * * * I am not firing you for that" (Tr. p. 503); that when Schotters told him he was fired for making statements about the Company beating him out of money, he answered, "Well, didn't they?"; that Schotters told him that he was not firing him for Union activity (Tr. p. 504), but for remarks that he was making about the management.

On cross-examination he testified that he felt that the Company had beat him and the other men out of some money by reason of the bonus system, which had been in effect and then stopped (Tr. p. 505); that he had said to various supervisors that the men had not been paid for the bonus they had earned while the bonus was in effect (Tr. pp. 506-508); that he discussed the matter several times among the men "about the bonus the Company beat them out of" (Tr. p. 509); that in the last year he discussed it more than usual (Tr. p. 509); he admitted specifically that he had engaged in criticism of the management (Tr. p. 514); that he didn't exactly criticize them, but "I did get bold enough to tell them to their faces a couple of times, like Mr. Yoxall and Mr. Day, they weren't doing it according to the Company's word—when they first started paying the bonus they staked the reputation of the Company for honesty on the bulletin board that we would be paid so much, and I said they never had done it"; that he felt that the Company or the management had been dishonest in the way they handled the bonus, and actually did call it that, and still did (Tr. p. 515); that his general feeling was that the Company was not playing fair with the men in the casting shop; that he felt and still feels that the men have never gotten a fair deal (Tr. p. 515); that he had threatened bodily harm to other employees lots of times, but that nobody ever came to any harm from him (Tr. p. 516); that when he would threaten or swear at other employees it would blow over and that would be the end of it (Tr. p. 516).

In response to questions by the Examiner he testified that **after he joined the A. F. of L. he did not solicit any-**

one else to join the organization; that he may have mentioned the fact to others that he had joined himself, but not a great deal (Tr. p. 521).

Reading his testimony in the record and hearing it given on the witness stand, it is very easy to understand why he was discharged. He, himself, corroborated most of the complaints which his supervisory employees in the Company had to make about him, and which led up to his final discharge.

(b) **The Company's Case.**

P. W. Day testified that he took charge of the casting shop on February 1, 1941; that at that time he found that there was considerable grumbling among the employees, and the first thing he did after he took charge of the job was to send for Elliott; that he called Elliott because he had the reputation of being a severe critic of the management, the Company, and everybody in general (Supp. p. 92); that he had a number of conversations with Elliott in which Elliott said, among other things, that under the bonus plan "he had been cheated out of quite a lot of money by the Company" (Supp. p. 93); that Elliott told some of the men that the Company did not intend to abide by the agreement of March 18, 1941; that it just did not mean anything (Supp. p. 95); that Elliott would not bring up grievances of the men on his shift in his capacity as representative of the Independent Union (Supp. pp. 96-97); that it was reported to him that Elliott had told the men that the Company did not intend to make any adjustments, that they did not intend to live by the agreement, and there wasn't any use taking any grievances to the office; that they wouldn't get any satisfaction (Supp. p. 97); **that he had difficulty with the production of the cast shop in June, the quality of the metal being poor, and the production of the cast shop being low; that the production was the lowest production per man as far as any records of the Company would show going back for a number of years** (Supp. p. 98); that they were having a large percentage of metal rejected in the mill due to cast shop defects; that cast shop defects are the most serious defects we could have in the manufacture of am-

munition; that he had a computation made showing the number of rejections in the mill for cast shop defects which showed the following: January, 1941—none; February—3; March—18; April—27; May—28; June—203; July—127 (July a three-weeks month because of the week vacation); August—150; September—99; October—35; November—9; that there was no change in the mechanical setup or anything else to account for this variation except the question of the men following instructions, carrying out the casting procedure in the proper manner (Supp. pp. 100-1); that when the production per man fell below any previous record in June of 1941 he had a discussion with the foreman to make some effort to determine the reason; that the foreman reported as the reason the general indifference of the men, instead of trying to do what they should they tried to do as little as possible, and that some of them particularly were that way; that he got a report that this feeling was being promoted by Williams particularly, and Elliott also (Supp. p. 101); that Burdette Williams and Elliott were stirring up the dissatisfaction (Supp. p. 102); that Williams and Elliott particularly were promoting that feeling in the cast shop. He then testified more specifically with respect to the defects in metal and the effects of such defects upon the production of military ammunition; that the thing that caused these defects principally was the failure of the men to follow instructions and that the foremen reported difficulty in getting them to follow instructions (Supp. p. 105); in particular they reported that they were having difficulty in getting the men to follow instructions because Elliott would make comments when they had written instructions posted in the shop that such instructions were no good, that the men in the shop knew more about making metal than the men who wrote the instructions, and general widespread contempt of supervisory forces and disregard of their instructions (Supp. p. 106); that he got these reports from his foremen to the effect that the department as a whole was not following instructions, and particularly that Williams and Elliott were leaders and the ones who were most defiant and showed the most disregard to following instructions (Supp. p. 107); that on July 22, 1941, Carlton reported to him

with respect to the proposed shift change, that Elliott said that the Company was trying to beat the men out of some more money, that they were continuing their policy of trying to rob the employees (Supp. p. 107); that this was reported to him on the morning of July 23rd; that Carlton said to him "I don't see how you can run a cast shop with a man talking that way all the time" (Supp. p. 108); that he said to Mr. Carlton "I guess we will finally have to get rid of him," and on July 23rd sent word by Gerding to have Elliott come in and see him (Supp. p. 108); that Elliott did not finally come in until the following Saturday morning, which was July 25th; that he told Elliott that we could not tolerate a man who was continually talking about the supervisory force and talking about the Company the way he had done; that he (Day) had done everything he possibly could to correct things in the plant; that Elliott had no complaint except as to what had happened years before he had charge of the shop; that Elliott continued to criticize the management and supervisory forces, and under those conditions he could not tolerate him in the casting shop; that he told Elliott he had the right of appeal to any other superior officer in the Company he wished to go to and if they told him he had to use him he would get along the best he could, but conditions in the cast shop absolutely had to be improved (Supp. p. 108); that following the discharge of Williams and Elliott conditions in the cast shop were better in most every respect, men took care of their shops better, and took care of their jobs better, the quality improved, and there was less ill-feeling toward the Company, and the production was better, and things moved along peacefully ever since (Supp. p. 109).

On cross-examination he testified that the immediate factor which determined him to discharge Elliott was the report which Carlton made of the occurrence on the night of July 22nd; that Carlton reported to him that Elliott said that every change the Company made was for the purpose of trying to beat the men out of some money and to take advantage of the men; that he was trying to make us out a bunch of thieves, and every time we made a change everything was to the advantage of the Company and we never considered the men (Supp. p. 124); that he

had been doing that for some time; that Carlton said to him "I don't know how you are going to have any discipline in the cast shop with conditions like that."

On redirect examination he testified that the reason for the determination to discharge Elliott on July 23rd and the discharge of him on July 25th was that "we could not tolerate a man in his position that was so critical of the management and supervisory forces at all times and it just was not possible to get along with a man with his attitude toward the management" (Supp. p. 127); that he did not know on either July 23rd or July 25th whether Elliott was a member of the Union; that membership in the Union had nothing to do with the discharge; that he did not know whether Elliott held any office in the Union; and that the fact of being elected to office had nothing to do with the decision (Supp. p. 128).

Charles Andrus testified that Elliott did a lot of talking and a lot of faultfinding with the Company; that everything the Company did Elliott would say would be against the working men (Supp. p. 129); that when the change in working schedules was made he said that the Company just did it to take the extra time away from the men so they couldn't make the extra money (Supp. p. 129); that he made reports to Gerding about Elliott talking so much in the shop to the men and finding fault with the work; that Elliott would get four or five men together and they would all talk to him ten or fifteen minutes and neglect their work and they wouldn't be attending to the furnaces or doing what they should; that he would go to one side of the shop or another and get four or five men over there and talk to them maybe ten or fifteen minutes and leave the furnaces alone (Supp. p. 130); that he would make everybody dissatisfied in the shop; that the general attitude of the men in the shop following conversations with Elliott was that they didn't seem to want to go ahead and take orders like they should, by having so much discord in the shop all the while and finding fault (Supp. pp. 130-1); that he made a complaint to Mr. Day about Elliott, about him going around from one side of the shop to the other and talking with the men and saying that the Company was just trying to rob the men; that occurred along in June of this year; maybe four or five weeks before

he was discharged (Supp. p. 131); that he said that to a lot of the men in the shop; that on one occasion when Mr. F. W. Olin donated some money to Cornell University, Elliott said to the men, "He just took that away from the working people. I feel just as if I gave that to Cornell just as much as Mr. Olin"; that he complained to Gerding about Elliott on more than one occasion, on three or four different times along in April, May and June of this year (Supp. p. 131).

On cross-examination he testified that Elliott would go around and talk to a group of men and take them away from their work or take their time away from their work (Supp. p. 132); that he did this along in June, and, in fact, had done it more or less off and on for a long time, maybe a year or two (Supp. p. 132); that on one occasion in May of 1941 he went to the west side of the shop over to the east side of the shop and he was talking there with one of the casters for ten or fifteen minutes, and there were a couple of other men around there (Supp. p. 132); that Elliott would start off and go away from his furnace to another furnace and start talking, and the first thing you know there would be four or five other fellows walk over there and they would hold a conversation there for ten or fifteen minutes (Supp. p. 133).

Earl Jones testified that Elliott had complained to him that the Company cheated him out of some money in connection with the bonus, and that he had heard him say that to others; that he would tell the fellows they cheated him out of so much money and that the Company owed him from three to five thousand dollars (Supp. p. 135). On cross-examination he testified that Elliott said, "Well, if we can collect what the Company owed us we would not have to be working"; that "they cheated us out of five thousand bonus"; that sometimes he would say three thousand, and one time he got it up to seven thousand (Supp. p 137).

Granville E. Gerding, Superintendent of the Casting Shop, testified that on one occasion when Mr. Olin had given some money to a certain college Elliott said that Mr. Olin was taking the money out of the workmen's pockets; that he felt as though he was donating that, and

not the Company (Supp. p. 139); that Elliott had said from time to time that the Company was trying to get the best of the men (Supp. p. 139); that he had several reports from Elliott's foreman from time to time of him going around the shop and talking to the men and taking the men's minds off their job; that these reports were received around in May and June, 1941 (Supp. p. 140); that on the morning of July 23, 1941, he was instructed by Day to tell Elliott to come in to see him, but he didn't come in until July 25th (Supp. pp. 140-1).

Orville E. Carlton, night supervisor in the brass mill and casting shop, testified that Elliott has always been very much opposed to any changes that the management might make and caused an awful lot of disturbance among his fellow-workmen by criticizing the management to them; that he would always tell the men about any change that happened to be coming up that it wouldn't do them any good, and sort of make the men feel that what we were doing was making changes that would not do them any good at all, such as maybe beating them out of some extra time they might get (Supp. p. 142); that on the occasion of the proposed shift change Elliott said, "All the changes they make is just to beat us out of some money" (Supp. p. 143); that he learned from another workman that Elliott was in bad faith telling them that he (Carlton) had said that the men were foolish for going on the new change (Supp. p. 144); that when he charged Elliott with doing so, Elliott said, "If I told them, what of it?" and Elliott also said, "I don't know for sure I told them that"; that he reported this matter to Day the following morning, July 23rd, and recommended to Day that Elliott be removed from the department (Supp. p. 144); that he told Day "due to the disturbance Elliott was causing among his fellow workmen we would be better off to let Elliott sit out in the office and not come in contact with other men down there" (Supp. p. 144).

William Grunner testified that Elliott had threatened to whip him (Supp. p. 154); that on occasions he heard Elliott telling how damn cheap the Company was and how much money they had stolen in bonuses (Supp. p. 155); that he would talk that way in the washroom when there was a

whole shift of fifteen to twenty men present; that he would tell the men he would not talk for them as their Union representative (Supp. p. 156).

William Keil, foreman, testified that Elliott always seemed to go around and do quite a bit of talking to the men; that he didn't think the Company was fair with him in regard to his pay and his bonus; that he said that the Company owed him so much bonus and had taken it away from him; that he had heard Elliott make such statements several times to the men in the shop; that this conversation of Elliott would keep the other men off their jobs to a certain extent; that he reported these matters to Day; that the statement on the quit slip (Respondent's Exhibit 16) correctly states Elliott's attitude to the best of his knowledge and belief (Supp. p. 160).

Glenn Claypool, a fellow caster, testified that Elliott appeared to be sore at the whole shebang; that he heard him say with respect to the bonus system that the Company stole the men's money; that he heard that on a number of occasions (Supp. p. 163); and that he heard Elliott say it would not do any good to take up grievances with the Company.

Frank A. Schotters testified that Elliott came to him right after he was discharged by Day; that he wanted to know why he was discharged, and was told that his critical remarks had affected production in the department; that he explained to him that we did not allow statements to be made by any employee such as he made (Supp. p. 203); that he had received information that Elliott was criticising the management, criticising the Olins, the manner in which they took advantage of their employees, that the Olins spent their entire time devising ways and means of stealing, defrauding, etc., moneys that were duly belonging to the employees; that the Company owed a number of men in the casting shop considerable due to a bonus plan which had been dropped; "which was all confirmed by Mr. Elliott when he talked to me" (Supp. p. 204); that Elliott said to him "the Olins were a God-damned bunch of crooks, that all they did was spend their time trying to figure out ways and means of taking money

away from employees; that the Company owed him several thousand dollars * * * that he was going to collect it; that he had contacted an attorney and was going to see this money was paid to him" (Supp. p. 204); that he told Elliott that he did not allow any man to make such statements of men connected with the corporation; that he told Elliott there wasn't anything he could do for him, because a man who felt that way and talked that way about the executive heads of the business had no business being in the plant (Supp. p. 205).

(c) **The Board's Case in Rebuttal.**

William Elliott denied that he threatened to whip Grunner (Tr. p. 2352); denied calling the Olins a God-damned bunch of crooks (Tr. p. 2352); and denied talking to other employees, keeping them from working, but helped them out in several instances (Tr. p. 2353).

In the light of the above record, and particularly the testimony of William Elliott himself, there is no escaping the fact that he was a disgruntled, dissatisfied employee, highly critical of the management and everything that the management did in running the business, and one who did not hesitate to express his feelings openly and violently, not only to his superior officers, but to his fellow employees. It is not reasonable to expect that any company should be compelled to keep in their employ a man whose attitude toward the Company, openly expressed to his fellow employees, was such as Elliott admitted that he had. There is no evidence showing or tending to show that Elliott was discharged because of union activity, except the bare fact that his discharge followed his election as an officer of Local 333. He testified himself that he engaged in no activity on behalf of the union. On the contrary, the overwhelming weight of the evidence shows that he was discharged for a lawful and proper cause.

The Board has indicated its misconception of the true basis for determining whether a discharge is discriminatory or not by its finding that "We are not convinced, nor was the Trial Examiner, by Day's testimony or by the testimony of other witnesses for the respondent who also described conditions in the casting shop, that Elliott was

responsible for slowing up production or for the poor quality of the work in the casting shop * * * No showing is made in the record that Elliott's attitude toward and remarks about the respondent and working conditions were in fact the cause of the other employees' bad work, or that there was any reasonable basis for the respondent's believing so. It is as reasonable, for example, to attribute the alleged decrease in production to the widespread dissatisfaction with working conditions which Day admitted existing, as to Elliott's attitude and remarks" (Supp. p. 41). The issue in this case is not whether Elliott was or was not actually responsible for the slowing up of production or the poor quality of work in the casting shop. The only question, in this connection, is whether or not Day actually did, in good faith, believe that Elliott was responsible, in whole or in part. If there were no grounds for such a belief on Day's part, then Day could not be said to have acted in good faith in discharging Elliott because of any such belief. But if there was any substantial evidence upon which Day could have arrived at the conclusion that Elliott was responsible for slowing up production and poor quality of work, then it is immaterial that there was also evidence in the record from which he might have arrived at a different conclusion. There is no dispute about the fact that production was slowed up; that there was an impairment in quality; that the foremen reported to Day their belief that Elliott was responsible, at least in part; and that after Elliott's discharge both production and quality definitely improved. On this record there is no gainsaying the fact that there was ample evidence from which Day could and actually did arrive at the conclusion that Elliott was responsible for the deficiencies in production and in quality and should be eliminated from the picture.

In order to consider the discharge of Elliott in its true perspective, it should be viewed in the light of the Company's entire organization and operations, in the light of the discharges which normally take place in the operation of the Company's business, regardless of the presence or absence of union activity. During the year 1941 the Company employed at its plant at East Alton, Illinois, approximately 7,000 maintenance and production em-

ployees. During approximately eleven months of the year it transferred a total of 1,074 employees and during the same period a total of 1,424 terminations of employment occurred, of which sixty-seven were outright discharges, as distinguished from layoffs or voluntary quits (Supp. pp. 89-91). Out of all of these transfers and terminations the Trial Examiner and the Board between them them have found that in only one single instance, the discharge of William Elliott, did the Company discriminate against an employee in violation of the Act. In the case of William Elliott the only connection shown by the evidence between union activity on the part of the employee, and the discharge, was sequence in point of time. If no one, or practically no one, except union members had been transferred or discharged, or if the discharges and transfers of union members had been all out of proportion to the discharges and transfers of non-union men, or if there had been wholesale discharges of union men, or even an unusual number of discharges of those active in the union, or if Elliott had been particularly active in soliciting members in the union, it might be possible to draw an inference that the discharge of Elliott had some relation to union membership and union activity. But when 1,074 transfers take place out of a total employment of approximately 7,000, it is obvious that many of those transfers must have affected union members. And when only two of them are alleged by the A. F. of L. and none are found by the Board to have been discriminatory, any presumption or inference must disappear. And the same is true, although to a lesser degree, with respect to the discharges. Union men were not the only men who were discharged during the year 1941. Nor is there any indication in the record that proportionately more union men were discharged than non-union men. A total of sixty-seven employees were discharged, and 1,357 more were laid off or voluntarily quit, and only five of such discharges were charged, and only one found, to be discriminatory.

We believe that the evidence demonstrated in each case, including the case of William Elliott, that the Company had a valid and legitimate reason for making the transfers and discharges which formed the basis of the com-

plaint. These reasons were fully brought out in the testimony. And in the single case ruled against the Company by the Board we submit that it is far more reasonable to assume that William Elliott was discharged for the reasons given by the various witnesses on behalf of the Company, and either not denied or contradicted, or to a large extent admitted on the witness stand, than to assume that the Company would be so foolish as to discharge Elliott for union activity immediately following his election to office in the union. If the Company had really desired to get rid of Elliott because of his union activity, then surely it would have had better sense than to have discharged him immediately following his election to office. And why the Company should pick out him to discharge because of union activity, when it had not so discharged any of the vast number of men who had engaged far more actively in work on behalf of the A. F. of L., is not explained by either the Trial Examiner or by the Board or by anyone else.

The principles of law which are to guide the Court in passing upon the Board's findings with respect to an alleged discriminatory discharge are well settled and need not be discussed at length here. Among the most recent, and perhaps the most complete discussions of these principles, are to be found in two decisions of this Court: **Interlake Iron Corp. v. N. L. R. B., 131 Fed. (2d) 129**, and **N. L. R. B. v. Williamson-Dickie Mfg. Co., 130 Fed. (2d) 260.** Another illuminating discussion of this question is to be found in the case of **N. L. R. B. v. Goodyear Tire & Rubber Co., 129 Fed. (2d) 661**, decided by the Fifth Circuit.

The Company does not have to prove that it has not dominated or interfered with the Independent, and that it did not discriminate in discharging William Elliott. The burden of proof is on the Board to establish domination of the Independent and discrimination in the discharge of Elliott. **Interlake Iron Corp. v. N. L. R. B., 131 Fed. (2d) 129; N. L. R. B. v. Union Mfg. Co., 124 Fed. (2d) 332; Hazel-Allas Glass Co. v. N. L. R. B., 127 Fed. (2d) 109; N. L. R. B. v. Express Publishing Co., 312 U. S. 426.**

In the present case the Board has not sustained this burden of proof. There is no substantial evidence in the record to support its findings (a) that the individual contracts were used by the Company to impede and discourage self-organization among its employees (the contracts being legal according to their terms); (b) that the Company dominated and interfered with the formation and administration of the Independent and contributed support to it; and (c) that William Elliott was discharged because of his withdrawal from the Independent and because of his membership in and activity on behalf of Local 333.

We respectfully submit that the Decision and Order of the Board must be reversed.

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January 15, 1943.

(7)

United States Circuit Court of Appeals,

SEVENTH CIRCUIT.

WESTERN CARTRIDGE COMPANY, a Corporation, Petitioner, vs. NATIONAL LABOR RELATIONS BOARD and AMERICAN FEDERATION OF LABOR and Its Affiliated Organizations, Respondents.	No. 8142. Civil.
Consolidated Causes.	
WESTERN CARTRIDGE EMPLOYEES' INDEPENDENT UNION, Etc., Petitioner, vs. NATIONAL LABOR RELATIONS BOARD, AMERICAN FEDERATION OF LABOR and Its Affiliated Organizations, Respondents.	No. 8155. Civil.

SUPPLEMENT

To Brief of Petitioner Western Cartridge Company.

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SUPPLEMENT

To Brief of Petitioner Western Cartridge Company.

THE PLEADINGS.

BOARD'S EXHIBIT 1-A.

THE COMPLAINT.

(Omitting caption and signatures.)

It having been charged, as amended, by American Federation of Labor and its Affiliated Organizations, hereinafter called the union, that Western Cartridge Company,

hereinafter called the respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, 49 Stat. 449, hereinafter called the Act, the National Labor Relations Board, by the Regional Director of the Fourteenth Region, as agent for the National Labor Relations Board, designated by the National Labor Relations Board Rules and Regulations—Series 2, as amended, for its Complaint against respondent, hereby alleges the following:

1. Respondent is now and has been at all times hereinafter mentioned a corporation organized under and existing by virtue of the laws of the State of Delaware, having its principal office and place of business at East Alton, Illinois.

2. Respondent is now and has been at all times hereinafter mentioned engaged in a business at its plant at East Alton, Illinois, hereinafter called the plant, in manufacturing, selling, and distributing small arms ammunition, explosives, traps, targets, and brass articles of various kinds and descriptions.

Respondent did on or about July 8, 1941, form a corporation under and by virtue of the laws of the State of Maryland, which it wholly owns and controls, for the operations of the smokeless powder division of the plant.

3. Respondent in the course and conduct of its business and in the operations of the plant causes and has continuously caused large quantities of materials, consisting of copper, lead, zinc, steel, paper, tin, limestone, pitch, oil, lumber, coal, and chemicals, among others, to be purchased and transported in interstate commerce from and through states of the United States other than the State of Illinois to the plant (during the calendar year 1940, the company purchased approximately $9,000,000 of such materials, approximately 50% of which represents transportation of such materials from points outside the State of Illinois to the plant); and causes and has continuously caused large quantities of finished products manufactured at the plant to be sold and transported in interstate commerce from

the plant in the State of Illinois to, into, and through states of the United States other than the State of Illinois (during the calendar year 1940, respondent produced and transported approximately $20,000,000 of such finished products, approximately 50% of which represents transportation of such products from the plant in the State of Illinois to points outside the State of Illinois).

4. The union and its affiliated organizations are affiliated with the American Federation of Labor and are jointly and severally labor organizations as defined in Section 2, subdivision (5) of the Act.

The Western Cartridge Employees Independent Union of East Alton, Illinois, hereinafter called WCEIU, is unaffiliated and is a labor organization as defined in Section 2, subdivision (5) of the Act.

5. Respondent, by its officers and agents, while engaged at the plant as described above, did on or about April 26, 1941 discharge Richard Main; did on or about May 9, 1941 discharge James Oglesby; did on or about May 22, 1941 discharge Francis Bunzy; did on or about July 24, 1941 discharge Burdette Williams and Raymond Clark; did on or about July 25, 1941 discharge William Elliott; and did on or about July 28, 1941 transfer Arthur Williamson. Respondent did on or about May 23, 1941 reinstate Francis Bunzy and did on or about August 18, 1941 retransfer Arthur Williamson to his former department but to a different shift.

Since said dates respondent has refused and failed and does now refuse and fail to reinstate Richard Main and James Oglesby, Burdette Williams, William Elliott, and Raymond Clark, and has refused and failed and does now refuse and fail to reinstate Arthur Williamson to his former position.

Respondent discharged and transferred said persons, and each of them, as above set forth, and failed and refused and does now fail and refuse to reinstate them, and each of them, as above set forth, for the reason that they, and each of them, joined and assisted the union and refused to join and/or assist the WCEIU.

6. By the acts set forth in paragraph 5 hereof, and each of them, respondent did discriminate and is discriminating with regard to hire, tenure, terms, and conditions of employment of said Richard Main, James Oglesby, Francis Bunzy, Burdette Williams, Raymond Clark, William Elliott, and Arthur Williamson, and each of them, and did discourage and is discouraging membership in the union, and did encourage and is encouraging membership in the WCEIU, and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8, subdivision (3) of the Act.

7. Respondent, by its officers and agents, while engaged at the plant as described above, did on or about June 4, 1937 instigate the formation of WCEIU; and from that date down to and including the date of issuance of this Complaint, did advise, urge, and warn its employees to join and assist the WCEIU; did freely permit the WCEIU to solicit members on respondent's property and during working hours, and to post notices as to meetings and other affairs of the WCEIU on its bulletin boards within the plant; did give financial and other support to the WCEIU; did deduct dues from employees' pay and give assistance in the collection of dues from employees who did not agree to the dues checkoff; did grant recognition to WCEIU as exclusive bargaining representative for respondent's production and maintenance employees; did dominate and interfere with the administration of the WCEIU; did interfere with the selection of representatives for WCEIU; did freely permit petitions for representatives to be circulated on respondent's premises during working hours; and did otherwise encourage the formation and growth of the WCEIU.

On or about August 12, 1937, respondent did enter into a contract with the WCEIU, known as the "basic agreement," now in force and effect, granting to WCEIU exclusive bargaining rights as to respondent's production and maintenance employees, covering wages, rates of pay, hours of employment, and other conditions of employment. Respondent granted exclusive bargaining recognition to WCEIU at a time when it did not represent an uncoerced majority of such employees.

On or about June 4, 1941, respondent did enter into a contract with WCEIU pursuant to the provisions of the "basic agreement" above described, now in force and effect, covering certain terms as to wages, rates of pay, hours of employment, and other conditions of employment. Respondent entered into said contract upon the basis of inadequate proof of representation, if any, by WCEIU of a majority of respondent's production and maintenance employees.

8. By the acts set forth in paragraph 7 above, and each of them, respondent engaged in and is engaging in unfair labor practices within the meaning of Section 8, subdivision (2) of the Act.

9. Respondent while engaged at the plant as described above, did, on or about February 1, 1941 and thereafter down to and including the date of the issuance of this Complaint solicit written withdrawals from the union; did on or about May 1, 1941 and thereafter down to and including the date of the issuance of this Complaint question employees as to union affiliation and activity; did on or about May 20, 1941 up to and including May 26, 1941 attempt to instigate the formation of a labor organization among production and maintenance employees of the smokeless powder division of the plant known as Western Cartridge Company Employees Association; and from on or about May 1, 1937 down to and including the date of the issuance of this Complaint did advise, urge, and warn its employees to refrain from joining or assisting the union or other affiliated labor organizations.

10. Respondent, by its officers and agents, while engaged at the plant as described above, did, at various times from July 5, 1935, down to the date of issuance of this Complaint, solicit and obtain from its employees individually signed promises, including among other things limitations on employees' right to strike and engage in other concerted activities.

Respondent solicited and obtained said promises from its employees in order to impede, discourage, and defeat the orderly processes of collective bargaining with its em-

ployees and to encourage, develop, and force upon its employees the inequitable processes of individual bargaining and further in order to discourage membership in any labor organization among its employees and to interfere with, restrain, and coerce its employees in the exercise of the rights guaranteed them in Section 7 of the Act.

11. By the acts set forth in paragraphs 9 and 10 hereof and each of them, respondent did engage in and is engaging in unfair labor practices within the meaning of Section 8, subdivision (1) of the Act and said promises, agreements, or contracts are, therefore, invalid, void, and of no effect.

12. By the acts set forth in paragraphs 5, 7, 9, and 10 hereof, and each of them, respondent did interfere with, restrain, and coerce its employees and is interfering with, restraining, and coercing its employees in the exercise of rights guaranteed them in Section 7 of the Act.

13. By the acts set forth in paragraphs 5, 7, 9, and 10 hereof, and each of them, respondent did engage in and is engaging in unfair labor practices within the meaning of Section 8, subdivision (1) of the Act.

14. The acts of respondent set forth in paragraphs 5, 7, 9, and 10 hereof, occurring in connection with the operations of respondent described in paragraphs 2 and 3 above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states, and have led to and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

15. The aforesaid acts of respondent set forth in paragraphs 5, 7, 9, and 10 hereof constitute unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1), (2), and (3), and Section 2, subdivisions (6) and (7) of the Act.

Wherefore, the National Labor Relations Board, by the Regional Director, Fourteenth Region, on this nineteenth day of November, 1941, issues its Complaint against Western Cartridge Company, a Corporation, respondent herein.

NOTICE OF HEARING.

Please Take Notice that on the first day of December, 1941, at 10 o'clock in the forenoon, Central Standard Time, at Village Hall, West Main and North Tenth, East Alton, Illinois, a hearing will be conducted before the National Labor Relations Board by a Trial Examiner to be designated by it in accordance with the National Labor Relations Board Rules and Regulations—Series 2, as amended, Article II, Section 23, and Article IV, Section 3, on the allegations set forth in the Complaint attached hereto, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

You are further notified that you have the right to file with the Regional Director for the Fourteenth Region, with offices at 101 United States Court and Custom House, Twelfth and Market Streets, St. Louis, Missouri, acting in this matter as agent of the National Labor Relations Board, an answer to the said Complaint within ten (10) days from the service of said Complaint.

Attached hereto is a copy of the Charge, as amended. Enclosed herewith for your information is a copy of the Rules and Regulations—Series 2, as amended, made and published by the National Labor Relations Board pursuant to the authority granted in the National Labor Relations Act. Your attention is particularly directed to Article II of said Rules and Regulations.

Please Take Notice that duplicates of all exhibits which are offered in evidence will be required unless, pursuant to request or motion, the Trial Examiner in the exercise of his discretion and for good cause shown directs that a given exhibit need not be duplicated.

In Witness Whereof the National Labor Relations Board, by the Regional Director, Fourteenth Region, on this nineteenth day of November, 1941, issues its Notice of Hearing to the parties herein.

SECOND AMENDED CHARGE.

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Western Cartridge Company, East Alton, Illinois, hereinafter called the company, has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1), (2) and (3) of said Act, in that

1. The company, by its officers and agents, formed among its employees a labor organization known as Western Cartridge Employees Independent Union of East Alton, Illinois, on or about June 4, 1937, and at all times since that date has dominated and interfered with its administration and contributed financial and other support to it.

2. The company, by its officers and agents, on or about August 12, 1937 entered into a contract with Western Cartridge Employees Independent Union of East Alton, Illinois, granting to it exclusive bargaining rights as to wages, rates of pay, hours of employment, and other conditions of employment; and on or about June 4, 1941 entered into another contract with said labor organization covering certain terms as to wages, rates of pay, hours of employment, and other conditions of employment. On neither of said dates nor at any other time has said labor organization represented an uncoerced majority among employees of the company.

3. The company, by its officers and agents, discharged Richard Main on or about April 26, 1941; discharged James Oglesby on or about May 9, 1941; discharged Francis Bunzy on or about May 22, 1941; discharged Burdette Williams and Raymond Clark on or about July 24, 1941; discharged William Elliott on or about July 25, 1941, and transferred Arthur Williamson on or about July 28, 1941 to another department. The company reinstated Francis Bunzy on or about May 23, 1941 and retransferred Arthur Williamson back to his former department on or about August 18, 1941 but to a different shift. The company discharged and transferred these employees because they joined and assisted the undersigned union and refused to join or assist the Western Cartridge Employees Independent Union of East Alton, Illinois.

4. The company, by its officers and agents, advised, urged, and warned employees not to join or assist the undersigned union or other affiliated labor organizations from on or about May 1, 1937 to date; solicited written withdrawals from the undersigned union; questioned employees as to their union affiliations and activities; attempted to form a labor organization among its employees engaged in the smokeless powder division known as Western Cartridge Company Employees Association; and from the date of the Act, July 5, 1935, and at various times thereafter executed individual contracts with its employees for the purpose of limiting employees in the exercise of their right to strike and to engage in other concerted activities, and for the further purpose of discouraging membership in labor organizations, and to otherwise interfere with, restrain, and coerce its employees in the exercise of rights guaranteed them in Section 7 of the Act.

5. By the above acts, and by other acts, the company, by its officers and agents, has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing its employees in the exercise of rights guaranteed them in Section 7 of the Act.

BOARD'S EXHIBIT 2.

Answer of Western Cartridge Company.

(Omitting caption, signatures and verification.)

Comes now Western Cartridge Company, respondent in the above entitled cause, and for answer to the complaint filed herein states:

(1) Respondent admits the allegations contained in Section 1 of said complaint.

(2) Respondent admits the allegations contained in the first paragraph of Section 2 of said complaint, and admits that it did, on or about July 8, 1941, form a corporation under and by virtue of the laws of the State of Maryland, but denies that it wholly owns and controls said corporation or that said corporation was formed for the operations of the Smokeless Powder Division of the plant. Respond-

ent states that it owns all of the capital stock of said corporation, has leased to said corporation certain real estate, buildings, improvements, appurtenances, tools, machinery and equipment formerly used by respondent in the manufacturing of smokeless powder, explosives and other products, and has entered into an agreement with said corporation whereby said corporation shall carry out certain contract obligations of respondent with respect to certain construction work and the manufacturing of certain smokeless powder and other products.

(3) Respondent admits the allegations contained in Section 3 of said complaint.

(4) Respondent denies that the American Federation of Labor is a labor organization as defined in Section 2, Subdivision (5) of the Act, and states that it is without knowledge as to what organizations are affiliated with the American Federation of Labor, or the nature of such organizations, and hence denies that they are labor organizations as defined in Section 2, subdivision (5) of the Act.

Respondent admits the allegations contained in the second paragraph of Section 4 of said complaint.

(5) Respondent admits the allegations contained in the first and second paragraphs of Section 5 of said complaint, except that respondent denies that it discharged or reinstated Francis Bunzay or discharged Raymond Clark, or that it refused and failed to reinstate Raymond Clark, and alleges that said Raymond Clark voluntarily left the employment of respondent.

Respondent denies the allegations contained in the third paragraph of Section 5 of said complaint.

(6) Respondent denies the allegations contained in Section 6 of said complaint.

(7) Respondent denies the allegations contained in the first paragraph of Section 7 of said complaint, except that respondent admits that it did deduct dues from employees' pay, but only pursuant to written authorizations from such such employees, and did grant recognition to the Western Cartridge Employees Independent Union as the exclusive

bargaining representative of respondent's production and maintenance employees.

Respondent admits the allegations contained in the first sentence of the second paragraph of said Section 7 of the complaint, but denies that it granted exclusive bargaining recognition to the Western Cartridge Employees Independent Union at a time when it did not represent an uncoerced majority of such employees.

Respondent admits the allegations contained in the first sentence of the third paragraph of said Section 7 of said complaint, but denies that respondent entered into the contract with the Western Cartridge Employees Independent Union upon the basis of inadequate proof of representation, if any, by said union of the majority of respondent's production and maintenance employees.

(8) Respondent denies the allegations contained in Section 8 of said complaint.

(9) Respondent denies the allegations contained in Section 9 of said complaint.

(10) Respondent denies the allegations contained in Section 10 of said complaint.

(11) Respondent denies the allegations contained in Section 11 of said complaint.

(12) Respondent denies the allegations contained in Section 12 of said complaint.

(13) Respondent denies the allegations contained in Section 13 of said complaint.

(14) Respondent denies the allegations contained in Section 14 of said complaint.

(15) Respondent denies the allegations contained in Section 15 of said complaint.

Wherefore, respondent prays that said complaint be dismissed with prejudice.

INTERVENER'S EXHIBIT 3.

Answer of Western Cartridge Employees Independent Union.

(Omitting caption, signatures and verification.)

Now comes Western Cartridge Employees Independent Union and for answer to the complaint in the above entitled cause says:

(1) It admits that it is unaffiliated and is a labor organization as defined in Section 2, subdivision (3) of the Act; that on or about August 12, 1937, respondent did enter into a contract with the Western Cartridge Employees Independent Union, known as the "Basic Agreement," now in force and effect, granting to Western Cartridge Employees Independent Union exclusive bargaining rights as to respondent's production and maintenance employees, concerning wages, rates of pay, hours of employment, and other conditions of employment; that on or about June 4, 1941, respondent did enter into a contract with Western Cartridge Employees Independent Union pursuant to the said Basic Agreement, now in force and effect, concerning certain terms as to wages, rates of pay, hours of employment, and other conditions of employment; and

(2) It denies each and every other allegation in said complaint contained not hereinabove specifically admitted.

FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER AND OPINION OF THE BOARD.

(Omitting caption and signatures.)

Decision and Order of the Board.

Statement of the Case.

Upon a second amended charge filed on November 19, 1941,[1] by American Federation of Labor and affiliated organizations,[2] herein called the A. F. of L., the National Labor Relations Board, herein called the Board, by the Regional Director for the Fourteenth Region (St. Louis, Missouri), issued its complaint dated November 19, 1941, against Western Cartridge Company, East Alton, Illinois, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1), (2), and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint and of notice of hearing thereon were duly served upon the respondent and the A. F. of L., and upon Western Cartridge Employees Independent Union, herein called the Independent, a labor organization alleged in the complaint to be dominated by the respondent.

With respect to the unfair labor practices, the complaint alleged in substance: (1) that the respondent, on or about June 4, 1937, instigated the formation of the Independent, and that it thereafter dominated and interfered with the administration of the Independent, contributed financial and other support to it, and recognized the Independent as the exclusive bargaining representative of the respond-

[1] The original charge was filed on April 29, 1941, and an amended charge was filed on June 21, 1941.

[2] As hereinafter appears, Chemical Workers Local Union No. 22574, and International Molders and Foundry Workers Union of North America, Local 333, are the two affiliates of the American Federation of Labor having membership among the respondent's employees. Where these organizations are hereinafter mentioned separately, they are referred to, respectively, as Local 22574 and Local 333.

ent's employees in written contracts dated August 12, 1937, and June 4, 1941; (2) that the respondent discouraged membership in the A. F. of L. and encouraged membership in the Independent by discharging Richard Main, James Oglesby, Francis Bunzy, Burdette Williams, Raymond Clark, and William Elliott, by transferring Arthur Williamson, and by thereafter refusing to reinstate any of them except Bunzy; and (3) that, by the foregoing acts, by attempting to instigation the formation of Western Cartridge Employees Association, herein called the Association, by attempting to dissuade its employees from becoming or remaining members of the A. F. of L., by questioning its employees concerning their union affiliation, by soliciting and obtaining from its employees since July 5, 1935, individual employment contracts including, among other things, limitations upon their right to strike and to engage in other concerted activities, and by other acts, the respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

The respondent filed an answer on December 8, 1941, in which it admitted certain allegations with respect to its business, but denied that it had engaged in the unfair labor practices alleged in the complaint. On the same day, the Independent filed an answer admitting that it had entered into certain contracts with the respondent, but denying that it was dominated by the respondent.

Pursuant to notice, a hearing was held at East Alton, Illinois, from December 8, 1941, to January 9, 1942, before Horace A. Ruckel, the Trial Examiner duly designated by the Chief Trial Examiner. The Board, the respondent, the Independent, and the A. F. of L. were represented at and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties. At the opening of the hearing, the Trial Examiner denied a motion by the respondent to make the complaint more definite by specifying the names of the organizations affiliated with the A. F. of L., membership in which the respondent was alleged to have discouraged. During the course of the hearing, the Trial Examiner granted a mo-

tion by counsel for the Board to amend the complaint to include the name of Jack Otten as an employee alleged to have been discriminatorily transferred, and a motion by the respondent to amend its answer to include a denial of this additional allegation. At the conclusion of the Board's case, the respondent moved to dismiss the allegations of the complaint, separately and in their entirety. The Trial Examiner denied the motion. The Trial Examiner granted, without objection, motions by counsel for the Board to amend the complaint by making certain formal corrections therein and, at the close of the hearing, to conform the complaint to the proof as to formal matters. Counsel for the Board also moved to strike certain testimony adduced by the respondent with respect to the production record of Burdette Williams, on the ground that the respondent had failed to give counsel for the Board an opportunity to examine the respondent's written records bearing on the matter. The Trial Examiner reserved decision on this motion, which he later denied in the Intermediate Report. During the course of the hearing, the Trial Examiner made a number of rulings on other motions and on the admissibility of evidence. The Board has reviewed all the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On February 25, 1942, after submission of briefs by the A. F. of L., the Independent, and the respondent, the Trial Examiner filed his Intermediate Report, copies of which were served upon all the parties. He found that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1), (2), and (3) and Section 2 (6) and (7) of the Act. He recommended that the respondent cease and desist from its unfair labor practices, that it disestablish and withdraw all recognition from the Independent, and that it reinstate Elliott and Williams with back pay. With respect to the allegations of discrimination against the six other named employees, the Trial Examiner recommended that the complaint be dismissed.

On April 7, 1942, the respondent and the Independent filed exceptions to the Intermediate Report, and briefs in support of their exceptions. On the same day, the respond-

ent and the Independent also filed with the Board a joint motion to reopen the record for the purpose of receiving certain additional evidence of benefits allegedly gained by employees of the respondent as the "result of negotiations" between the Independent and the respondent. No valid reason was given for the failure to adduce such evidence at the hearing. Moreover, this proffered evidence, if adduced, would not affect our findings and conclusions hereinafter set forth. The motion to reopen the record is hereby denied.

Pursuant to notice and at the request of the respondent and the Independent, a hearing was held before the Board at Washington, D. C., on June 11, 1942, for the purpose of oral argument. The respondent, the Independent, and the A. F. of L. were represented by counsel and participated in the argument.

The Board has considered the respondent's and the Independent's exceptions to the Intermediate Report and the briefs in support thereof and, insofar as the exceptions are inconsistent with the findings, conclusions, and order set forth below, finds them to be without merit.

Upon the entire record in the case, the Board makes the following:

Findings of Fact.

I. The business of the respondent.

Western Cartridge Company, a Delaware corporation, operates a plant at East Alton, Illinois, where it is engaged in the manufacture, sale, and distribution of small arms ammunition, explosives, traps, targets, and brass articles of various kinds. The raw materials used by the respondent include copper, lead, zinc, steel, paper, tin, limestone, lumber, coal, and chemicals. During 1940, the respondent purchased for use at its East Alton plant raw materials valued at approximately $9,000,000, of which approximately 50 percent were received from sources outside the State of Illinois. During the same period, the respondent sold products manufactured at its East Alton plant valued at approximately $20,000,000, of which approximately 50 percent were shipped to destinations outside the State of Illinois.

On or about July 8, 1941, the respondent formed the East Alton Manufacturing Company, a Maryland corporation, all the capital stock of which is owned by the respondent. The officers and directors of the respondent direct the labor relations policies of this corporation and also serve as its officers and directors. The respondent leased to this corporation certain real estate, buildings, improvements, and equipment formerly used by the respondent in the manufacture of smokeless powder, explosives, and other products.[3] The respondent and the East Alton Manufacturing Company entered into an agreement under which the latter agreed to carry out the obligations of the respondent with respect to certain construction work and the manufacture of smokeless powder and other products.

II. The organizations involved.

Chemical Workers Local Union No. 22574 is a labor organization affiliated with the American Federation of Labor, admitting to membership employees in the smokeless powder division.

International Molders and Foundry Workers Union of North America, Local 333, is a labor organization affiliated with the American Federation of Labor, admitting to membership certain employees of the respondent on the western side.

Western Cartridge Employees Independent Union is an unaffiliated labor organization, admitting to membership employees of the respondent.

III. The unfair labor practices.

A. *Interference, restraint, and coercion; domination and support of, and interference with, the Independent.*

1. Background; the individual contracts.

During the summer of 1933, a group of the respondent's employees, who had previously been employed as coal miners in southern Illinois, began to discuss the question

[3] That part of the plant leased to this corporation is herein referred to as the smokeless powder division and is geographically separated from the other departments in the plant, herein referred to as the western side, by a river.

of union organization at the plant. J. M. Olin, the respondent's vice president, testified in effect that, because of the "agitation" and the "uproar" created in the plant by this group of employees, he addressed a mass meeting of the respondent's employees on the subject of unions and suggested that an employees' representation plan be formed, similar to the Works Council Plan in effect at the respondent's plant at New Haven, Connecticut,[4] but that the suggestion was not adopted by the employees.

At about the same time in 1933 that the question of union organization was being discussed in the plant by the employees and the management, the respondent revived its former practice, which had been in effect from 1915 to about 1921, of having its employees sign individual contracts of employment.[5] According to George Dawson, the respondent's former personnel manager and industrial counselor, the revival of the individual contracts in 1933 was due, in part, to the "industrial unrest throughout the country" resulting from "unionization." Olin testified that the individual contracts were reintroduced in 1933 be-

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[4] In *Matter of Western Cartridge Company, Winchester Repeating Arms Company Division* and *United Electrical, Radio & Machine Workers of America, C. I. O.*, 43 N. L. R. B., No. 22, the respondent consented to the disestablishment of the Plan at the New Haven plant.

[5] In each contract the respondent agrees to employ the employee for a period of 6 months (or, in renewal contracts, 1 year) "at such time and for such periods as in the discretion of the company its business may require," and to pay the "prevailing" wage with time and a half for overtime. The respondent reserves "the right at any time during the period of the contract to reduce the number of employees by lay-offs and that if Employee is so laid off he shall not be entitled to any wages during the period of any such lay off." The employee agrees to "devote his entire time and best energies to the interests of the company," with the understanding that, should he fail to do so, or "should his efficiency become impaired or should he refuse to perform his duties as provided herein," the contract is to become null and void, and the employee is to be subject to immediate suspension or dismissal "at the option of the company." The contract sets up a bonus system, "subject to the express understanding that such bonus should be paid only in the event Employee faithfully fulfills all his obligations." The contract recites that the employee recognizes that "a minimum labor turnover" is desirable, and provides that "in consideration of the compliance by the Employee with the covenants upon his part above set out, the Company agrees to pay the Employee, in addition to the total earnings paid to him" as wages, a certain percentage thereof as a bonus, but that if the employee violates any of the provisions of the contract the bonus shall be forfeited. A further clause provides that, in the event of disruption or material curtailment of operations of the respondent by reason of "fire, flood, *strike*, business depression, changing economic condition, acts of God or other causes beyond the control of the Company," the contract may be terminated by the respondent, in which case the employee's bonus is to be paid to him only if the termination is "for any reason not due to the fault of the Employee" (emphasis supplied).

cause of the respondent's desire "to get a little closer to [its] employees" and thereby stabilize employment, to encourage savings by its employees, and to counteract "propaganda" directed to the employees with respect to the National Industrial Recovery Act.[6] Olin stated at the hearing that he "had never been an enthusiast on N. R. A. or anything of its ilk."

Since 1933, individual contracts have continuously been employed by the respondent in dealing with its employees, and at the time of the hearing herein substantially all of its employees had signed individual contracts.[7] The record shows that, after each employee had served for a probationary period of 3 months, he was informed by his foreman or by a notice on his time card to go to the respondent's contract office for a personal interview concerning an individual employment contract.[8] Employees thus reporting, either singly or in groups, were told of the benefits to be had under the individual contracts and were urged to execute such contracts, although they were also informed that it was optional with them to do so.[9] When an employee's contract was about to expire, he was notified by the respondent to report at the contract office to sign a renewal contract. An employee who failed to go to the office for either his original or renewal contract was repeatedly notified until he did so.

It is clear that the form of individual employment contract thus urged by the respondent on its employees was and is, by its terms, an interference with the employees' right to engage in concerted activity as guaranteed in the Act. In effect, the contract purported to give the respondent the right to terminate the employment of any employee who participated in a strike or any other concerted activ-

[6] Section 7 (a) of that Act in effect guaranteed employees the right to form and join labor organizations without interference by employers.

[7] S. R. Irish, assistant to the plant manager, testified that the respondent had individual contracts with all but four employees. However, as set forth below, the individual contracts between the respondent and employees in its smokeless powder division were, by agreement with Local 22574, abandoned in 1941.

[8] As a matter of convenience, casting department employees were interviewed in the casting shop office.

[9] An employees' handbook published and distributed by the respondent also explains the benefits of the individual contract and invites employees to obtain them.

ity regarded as interfering with his "faithfully" fulfilling "all his obligations," and to deprive any such employee of his bonus. A premium was thus placed by the respondent on an employee's refusing to engage in concerted activities with his fellow employees, and the full weight of the respondent's approval was used in persuading employees individually to accept this restriction of their rights under the Act. Although acceptance of the contracts was theoretically optional with the employees, the record shows, as the Trial Examiner has found, that all employees were expected to sign contracts and that in fact all but three or four did so. We are convinced that the respondent's reintroduction of the individual contracts in 1933 and its persistent efforts thereafter to have employees sign them were due to a realization on its part of the restrictive effect of the contracts on the organizational activities of the employees and to a desire to accomplish precisely that restrictive effect. The contracts were reintroduced by the respondent in 1933 when the question of union organization was being actively discussed by employees in the plant following the passage of the National Industrial Recovery Act with its guarantee of employee freedom in union activities. This was preceded by or coupled with a suggestion by Vice-President Olin to the employees that they form an employee representation plan similar to the plan in effect at the respondent's New Haven plant. We believe that it was the purpose of both, and that the effect of the contracts since their reintroduction has been, to forestall union activity among the respondent's employees and to create a permanent barrier to union organization among them.[10]

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[10] Cf. *National Labor Relations Board* v. *National Licorice Co.*, 309 U. S. 350, aff'g as mod., 104 F. (2d) 655 (C. C. A. 2), enf'g as mod., *Matter of National Licorice Company* and *Bakery and Confectionery Workers International Union of America, Local Union 405, Greater New York and Vicinity*, 7 N. L. R. B. 537; *Matter of Superior Tanning Company* and *National Leather Workers Association, Local 43*, 14 N. L. R. B. 942, enf'd as mod., *National Labor Relations Board* v. *Superior Tanning Co.*, 117 F. (2d) 881 (C. C. A. 7), cert. denied, 313 U. S. 559; *Matter of Norman H. Stone, etc.* and *International Printing Pressmen and Assistants' Union, etc.*, 33 N. L. R. B. 1014, enf'd as mod., *National Labor Relations Board* v. *Stone*, 125 F. (2d) 752 (C. C. A. 7); *Matter of Brown-McLaren Manufacturing Company and Hamburg Manufacturing Company* and *Brown-McLaren Branch of Local 174, International Union, United Automobile Workers of America, a C. I. O. affiliate*, 34 N. L. R. B. 984; *Matter of Killefer Manufacturing Corporation* and *Steel Workers Organizing Committee*, 22 N. L. R. B. 484; *Matter of Trojan Powder Company* and *United Mine Workers of America, etc.*, 41 N. L. R. B., No. 240.

We find, as did the Trial Examiner, that the respondent, by urging and persuading its employees to sign the individual contracts of employment, has since July 5, 1935, interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act.

2. Formation and recognition of the Independent.

From 1933 to 1937 the relations between the respondent and its employees were governed by the above-mentioned individual contracts of employment and there was no union organization among the respondent's employees. In the spring of 1937, the Congress of Industrial Organizations, herein called the C. I. O., began an organizing campaign at the respondent's plant. Handbills were distributed and employees were solicited for membership. After several C. I. O. organizing meetings had been held and some of the employees had signed membership applications, steps were taken at the plant to oppose the C. I. O. by forming among the employees a labor organization of "their own," which later became known as the Independent. Charles Taylor, a machinist, was the principal organizer and proponent of the Independent. He discussed plans for this new organization with employees Mitchell and Ferguson, and they decided that, before other employees were solicited to join, the respondent's "attitude" should be ascertained. Taylor called on General Manager Bassett, told him of the plan to form an organization whose membership would be restricted to the respondent's employees, and asked him if there was any objection by the respondent to the idea. Bassett replied that the respondent had no objection to such an organization as long as its members "stayed within their rights" and did not solicit on the respondent's time and property. Taylor immediately began to solicit members. On the day following Taylor's talk with Bassett, Meyers, superintendent of the machine shop and Taylor's supervisor, told the latter that if he was "fooling around with a union" he could consider himself discharged. That evening Taylor told General Manager Bassett of this incident, and was in turn told by Bassett that Meyers' statement was "unfortunate" and that Taylor should continue on his job "as though nothing happened."

On June 4, 1937, Taylor and some 8 other employees of the respondent met at the office of an attorney, selected temporary officers for the Independent, and discussed plans for perfecting its organization. At about the same time, a membership drive was begun in the plant and employees were regularly solicited during working hours. On June 25, Otis Sullivan, the temporary secretary-treasurer of the Independent,[11] personally delivered to Vice-President Olin a letter in which the Independent claimed to represent a majority of the respondent's employees and stated that, upon the selection of permanent officers, it would make "demands" on the respondent. The Independent's majority claim was discussed with Olin at that time and, according to Olin, Sullivan stated that it had membership applications from 2200 employees. Olin asked "if there was anything in the union [the Independent] which . . . would nullify or modify or change the status" of the individual contracts of employment, and Sullivan replied that he did not know. Olin made it clear to Sullivan that, before recognizing the Independent as a bargaining representative, the respondent would have to be assured that the Independent's constitution and bylaws would not affect the "individual contractual relationship" existing between the respondent and the "bulk" of its employees. On the following day, June 26, Olin wrote to the respondent's attorney, George H. Williams, informed him of the Independent's letter of June 25 and of the discussion with Sullivan, and sought his advice with respect to a possible conflict between the existing "individual contractual relationship" and collective bargaining with the Independent. Olin further stated in the letter that:

> [The respondent's] position must necessarily be that it is our desire to protect and to continue the constitutional rights of the employee as an individual, and the Company as a corporate entity to enter into a contract such as now exists, and that we must ask that this contract be recognized and that all acts take due recognition of the existence of that contract, and that if

[11] After organization of the Independent had been perfected, Sullivan was made its permanent secretary-treasurer and the respondent granted him a year's leave of absence without pay, to enable him to devote all his time to the Independent's affairs.

> any action is taken which tends to modify, alter, or amend the individual relationship or nature of the contract then that change should be reflected in the individual contracts. The determination must be made eventually as to how far we can go in collective bargaining and other relationship with [the Independent] and at the same preserve the legal rights and position under the individual contract . . .

On July 23, 1937, following the adoption of a constitution[12] and the election of permanent officers and committeemen, the Independent wrote the respondent, listing the names of its officers and representatives and expressing its desire to conclude a written working agreement. On July 26 the Independent submitted to the respondent a proposed working agreement covering wages, hours, and other conditions of employment, and requested a conference to discuss this agreement. On August 10, 1937, the respondent met with representatives of the Independent, but, instead of discussing the terms of the working agreement previously submitted by the Independent, the respondent's attorney, Williams, presented a so-called basic agreement, which he had prepared in cooperation with the Independent's attorney. This agreement provided for recognition of the Independent as representative of the respondent's employees with respect to all matters not covered by the individual contracts and for continuation of the individual

[12] The constitution as adopted provided, among other things, as follows: All employees were eligible to membership excepting those employed in a supervisory or administrative capacity; meetings of the Independent were to be held upon call of the executive board; an executive board consisting of one member from each of six divisions of the respondent's plant was to be the governing body of the organization. Representatives on the executive board were required to have been in the respondent's employ for 2 years immediately prior to election. Officers of the Independent were to be elected by the executive board, and the board, assisted by an advisory committee, was to be responsible for conducting all negotiations with the respondent. All agreements of general importance pertaining to wages or hours of employment negotiated by the executive board were required to be referred to the general membership for ratification by secret ballot. The six divisions of the plant were broken down into various departments, from each of which a representative was to be selected for the advisory committee. Members of the executive board were to be elected for a term of 2 years. The board was to meet once a month or upon call of its chairman or of any three members thereof. It was provided that a majority vote of the membership was necessary for the adoption of the constitution and a two-thirds vote for the adoption of amendments thereto.

contract system.[13] The Independent's executive board at first rejected this basic agreement but, upon being told by the Independent's attorney, who had conferred with the respondent's attorney, that the respondent would not agree to any of the Independent's demands until the basic agreement was accepted, the board changed its decision. Thereupon, at a meeting with the respondent, on August 12, 1937, the Independent's representatives signed the basic agreement. The agreement was never thereafter submitted to the membership of the Independent for ratification.

From 1937 to 1941, the relationship between the respondent and the Independent was governed essentially by the basic agreement and the individual contracts, and the respondent rejected several requests by the Independent for a written working agreement. During this period, the respondent and the Independent held a number of conferences to consider demands by the Independent relating to wages, hours, and other terms of employment, and reached

[13] This agreement reads as follows:

The Basic Agreement.

The following is an agreement and compact made at East Alton, Illinois, on the 12th day of August 1937, between Western Cartridge Company (referred to herein as the Company) and Western Cartridge Employees Independent Union (referred to herein as the Union):

1. It appearing that the majority of the Company's employees are members of the Union, the Union is recognized, as the sole bargaining agent under the National Labor Relations Act, with respect to all matters not covered by the contracts of employment between the Company and those of its employees who have made them. Both the Company and its employees have valuable rights under said contracts of employment which they desire to preserve, and said contracts are recognized as valid and binding upon both parties thereto. It is contemplated that, from time to time, demands and grievances will be made under this agreement with respect to matters not covered by the said contracts of employment. Such demands and grievances may be initiated either by the Company or the Union. Negotiations with respect to such matters will be conducted by the accredited representatives of the Company and the Union.

2. Neither the Company nor the Union admit or assert any right to change said contracts of employment without the consent of both parties thereto. However, the Company may, from time to time, discuss with the Union matters which may involve changes in or modifications of said contracts of employment. If, from time to time, as a result of any such discussions, both the Company and the Union shall agree that any change or modification of the said contracts of employment shall be recommended to the employees holding such contracts, then the Company agrees to join with all employees who shall accept such recommendations in making such changes or modifications.

3. This agreement shall be in force for one year from this date and thereafter until terminated by written notice given thirty days in advance by either party to the other.

agreement on many of them, but not until after the A. F. of L. appeared at the plant, as described below, were any of these agreements embodied in a written contract.

3. Encouragement of the Independent and discouragement of the A. F. of L.

The record shows that at all times since its inception in 1937, the Independent, without objection by the respondent, has engaged in organizational activities on company time and property. During working hours and sometimes in the presence of foremen, employees were solicited, dues of 25 cents a month were collected, and petitions for departmental representatives were circulated in the plant. The respondent supplied and honored wage assignments used by the Independent in having dues of members checked off by the respondent. The respondent also furnished the Independent each month with the names of employees laid off, transferred, or rehired.

Francis Bunzy, a former member of the Independent who later joined Local 22574 and became its president, testified that, during the Independent's organizing campaign in 1937, he told his foreman, William Robertson, that the employees needed an "outside" union, and that Robertson replied, "Well, you would get farther with the Company with an independent union." At the hearing Robertson did not specifically deny having made this remark, but testified generally that he never discussed unions with employees and that he did not recall making the remark in question. The statement attributed to Robertson by Bunzy is consistent with the general pattern of events disclosed by the record. Moreover, with respect to other disputed testimony discussed below, we find Bunzy to be a credible witness, as did the Trial Examiner. We credit his testimony in this instance, and find that Robertson made the statement in question.

Despite the Independent's continuous membership campaign at the plant, its membership began to decline in the latter part of 1940. The executive committee of the Independent discussed ways and means of maintaining its membership and, failing to find a solution to the problem, decided "to see if there was some way that [the respond-

ent] could help us out, to bring our membership up." Accordingly, in November of that year the executive committee met with General Manager Bassett and George Dawson, then the respondent's industrial counselor, presented its declining membership problem, and asked for the respondent's assistance. Bassett made no definite commitment, but said that he would keep the matter in mind.[14]

During the latter part of December 1940, Fred Olds, an organizer for the A. F. of L., arrived in East Alton and made his first contact with employees of the respondent. At about the same time, Augenbaugh and Chapman, chairman of the Independent, were requested by Bassett to meet with him, Dawson, and Personnel Manager Haddleton. Bassett presided at the meeting and reopened discussion of the Independent's prior request for assistance. According to Augenbaugh's testimony, Bassett announced that the granting of a 2 percent wage bonus under the individual contracts of employment had been decided upon by the respondent's board of directors, and stated that, if a notice was posted in the plant giving the Independent credit for this increase, it would "bring the [Independent] membership up, showing that the union was trying to do something for members in the union . . ." Bassett's suggestion was accepted and, according to Augenbaugh, on the following day Chapman and Dawson jointly drafted such a notice and posted it on the respondent's bulletin board. Bassett did not testify concerning this incident. Dawson testified that he did not recall any statement by the respondent's representatives that the bonus increase be attributed to the Independent, but admitted that he verified the contents of a notice concerning this bonus increase which Chapman had prepared. He also testified generally that, on occasions when the Independent had previously requested assistance, the respondent had always denied these requests. The fact that this bonus increase was given shortly after the Independent's request for assistance and at about the same time that the A. F. of L. appeared on the scene lends credence to Augenbaugh's testimony. We accept his testimony, as did the Trial Examiner, and we find that

14 These findings are based on the undenied testimony of Orville Augenbaugh, who was then the Independent's secretary-treasurer.

the respondent assisted and encouraged the Independent by arranging for it to take credit for obtaining this bonus increase.

In the middle of January 1941, the A. F. of L. began to intensify its membership campaign among the respondent's employees. A mass meeting of employees was held on January 31 and a substantial number signed membership applications. On February 5, the American Federation of Labor issued a charter creating Local 22574 and giving it jurisdiction over employees in the smokeless powder division of the respondent. Following the election of permanent officers, Local 22574 met with the respondent on March 13, 1941, requested recognition as the exclusive bargaining representative for all chemical workers in the smokeless powder division, and offered to submit application cards to support its claim of majority representation. The respondent took this request under advisement, but later denied it. The respondent took the position that the smokeless powder division was not an appropriate unit and that Local 22574 would have to be certified by the Board as the representative for the employees in question. Accordingly, on March 25, 1941, Local 22574 filed a petition for investigation and certification of representatives with the Board's Regional Office in St. Louis, alleging that all employees in the respondent's smokeless powder division, with certain exceptions, constituted an appropriate unit.

Shortly after Local 22574 had demanded bargaining rights for employees in the smokeless powder division, and when it appeared likely that the A. F. of L. would extend its campaign to the western side, which it subsequently did, as pointed out below, the respondent took further steps to strengthen and support the Independent. On March 18, 1941, the respondent granted the Independent its first written working agreements. One was made for the casting shop and another for the brass mill. These agreements were in part intended to remove the widespread dissatisfaction which admittedly existed among the employees in those departments, and therefore provided for improvements in rates of pay and other working conditions. At about the same time, the respondent began to bring pressure to bear on William Elliott, then casting

shop representative for the Independent, to support the Independent. Elliott testified that on a number of occasions McCauley, a personnel supervisor, urged him to "get behind" the Independent, to which McCauley referred as a "company union," and "try to make something out of it." McCauley was not called as a witness, and we credit Elliott's testimony, as did the Trial Examiner. Elliott also testified that he had a number of conversations with P. W. Day, superintendent of the brass mill, concerning the Independent, one of which was as follows:

> . . . Day talked to me about the Independent Union and he asked me—he told—he said that he didn't see any reason why the Independent Union couldn't be made to work. He says, "Now, Bill, you are the only man back there can put the union inside or out."
>
> Now he said, "It is up to you, and I am planning on you to help me."
>
> I said, "I would not ask a man to join any union;" —I said "They don't especially like that union for different reasons. They have been told it is a company union."
>
> Well, he said, "you can do it. You are the only man out there that can do it."
>
> "Well," I said, "Maybe I am but I can't do it. I won't do it." I said, . . . "When it comes to the question of putting the Union over," I says, "you can count me out."

Day testified at the hearing but did not deny this testimony, which we credit, as did the Trial Examiner.

Later, when it appeared to Day that Elliott, the Independent's department representative, was not energetic enough in presenting grievances for employees, Day warned Elliott to become more active as an Independent representative, or to resign and let someone else take his place. Elliott then withdrew from the Independent and joined Local 333; shortly thereafter he was discharged. Day admitted at the hearing that Elliott's failure to handle grievances as a representative of the Independent was a factor

in his discharge, because it "tended to indicate his attitude toward the company." [15]

The respondent's encouragement of the Independent on the western side was accompanied by its discouragement of Local 22574 in the smokeless powder division, for which the Independent was the recognized bargaining representative. The record shows that, during the first 6 months of 1941, and especially after Local 22574 had demanded bargaining rights, the respondent repeatedly manifested its hostility to the A. F. of L. According to the testimony of Bunzy, president of Local 22574, in April or May of 1941 he was called to the office of Thomas Wortz, then superintendent of the smokeless powder division, and had a conversation with him about unions. Wortz, who had not previously known Bunzy, opened the conversation by saying, "I expected a rough sort of fellow, being mixed up with a union like you are," and then said that Bunzy could "go places" with the respondent if he would "make [himself] right with them" offering to send Bunzy to a training school. Wortz further stated that the employees should come to the respondent as a "committee" and have a "union of [their] own," instead of "going over to East St. Louis and getting a pot-bellied racketeeer" to represent them. He finally claimed that Local 22574 was "no good" and was composed of "a bunch of guys" who were "bosses and wouldn't work" and who lived off the employees' wages paid out in union dues. At the hearing Wortz did not recall making the statements attributed to him by Bunzy, but admitted having a conversation with Bunzy in which he asked Bunzy, as president of Local 22574, to put a stop to the union agitation in the plant, and then discussed the respondent's library facilities and its policy of sending employees to a foreman's school. Wortz's testimony thus corroborates in certain respects the testimony of Bunzy. We find, as did the Trial Examiner, that Wortz made the statements attributed to him by Bunzy.

William Gent, an assistant foreman who belonged to Local 22574, testified that on one occasion, when he was wear-

[15] We hereinafter find that Elliott was discriminatorily discharged because of his withdrawal from the Independent and his activities on behalf of Local 333.

ing a union button, Wortz remarked that it was not a "good idea" for a foreman to wear a union button. Gent also testified that on another occasion Wortz asked him to sign a statement withdrawing from Local 22574, and stated that Local 22574 "was not going to get in" the smokeless powder division and that the respondent could do more for Gent than the officers of Local 22574. Wortz denied at the hearing having made these statements to Gent, but admitted finding under his office door Gent's written resignation from Local 22574. Here, again, Wortz's testimony tends to corroborate in part the testimony denied by him, and the conduct he denies is consistent with the pattern of events disclosed by the record. We find, as did the Trial Examiner, that Wortz made the statements in question to Gent.

Ellis McPherson, an hourly paid foreman who was at one time a member of the Independent but later joined Local 22574, testified that on one occasion Wortz pointed to McPherson's A. F. of L. button and said, "I can't tell you not to belong—and I can't tell you how to vote,"[16] but that, if McPherson "went along" with the respondent, he would be given a wage increase. Wortz denied making this statement. McPherson's testimony is consistent with other testimony as to anti-union statements made by Wortz, as found above. We do not credit Wortz's denial, but find, as did the Trial Examiner, that Wortz made the statement attributed to him by McPherson.

Wortz's opposition to the A. F. of L. and Local 22574 was reflected in the attitude of some of his assistants in the smokeless powder division. Charles Womack, a member of Local 22574, testified that Pivoda, a truck foreman, told him to "lay low on union talk" because the respondent had spotters in the plant. According to employee Robert Carroll, Pivoda told him that Wortz had instructed Pivoda to "break up" the strong union feeling of two new truck drivers. Pivoda testified that he did not recall making the statement attributed to him by Carroll and that he had not received any such instructions from Wortz, but he admitted telling Womack to "keep his nose clean" because he did not want to lose Womack. We credit the

[16] This referred to the Board election at the plant on May 26, 1941.

testimony of Womack and Carroll, as did the Trial Examiner.

McPherson further testified that in April 1941 Foreman Arnold urged him to withdraw from Local 22574 and stated that the respondent did not want foremen to belong to that union. He also testified to a conversation with Foreman Monical in which the latter asked McPherson whether the respondent or the A. F. of L. "could do the most" for him. Monical and Arnold denied the statements attributed to them by McPherson, but Arnold admitted having had several conversations with McPherson about the A. F. of L., the substance of which he was unable to recall at the hearing. We have found McPherson to be a credible witness, as did the Trial Examiner, and we credit his testimony in this instance.[17]

According to employee Wildt, Foreman Canhan told him that Canhan had a brother-in-law who had gone on strike for 6 months, and asked Wildt if he "wanted to be like that." Canhan then added that it meant more to Wildt to have an individual contract than to belong to a union and lose the contract. Canhan did not testify, and we credit the testimony of Wildt, as did the Trial Examiner.

Elden Weishaupt testified that Foreman Schindel told him, in substance, that he would "get ahead around here" if he would vote down the A. F. of L., and that the A. F. of L. had caused trouble in many places. Schindel then referred to the case of a knitting mill which had moved

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17 McPherson, like Gent, is apparently a minor supervisory employee. We have held that an employer may properly require supervisory employees such as foremen to withdraw from a union which admits to membership both supervisory and ordinary employees, or to choose between losing their supervisory positions and withdrawing from the union. *Matter of The Sherwin-Williams Company* and *Chemical Workers Union No. 22215, American Federation of Labor*, 37 N. L. R. B. 260, enf'd, *National Labor Relations Board* v. *Sherwin-Williams Company*, decided August 3, 1942, (C. C. A. 3); *Matter of General Motor Sales Corporation, etc.* and *International Union, United Automobile Workers of America, Local 216, C. I. O.*, 34 N. L. R. B. 1052. In those cases, however, the employers' action was taken as part of an attempt to maintain strict neutrality and to avoid any imputation of interference with the organizational activities of non-supervisory employees. In the present proceeding, there is no showing that the respondent's interference with the union activities of McPherson and Gent was part of any attempt on the respondent's part to maintain neutrality. On the contrary, we are convinced by the evidence that the respondent was concerned with their union activities only because of its opposition to Local 22574. Cf. *Matter of Golden Turkey Mining Company* and *International Union of Mine, Mill, and Smelter Workers, Local No. 410*, 34 N. L. R. B. 760.

from a nearby town to another part of the country to avoid a union, adding: "You know something like that could happen here." Schindel admitted, and we find, that Weishaupt's testimony is substantially correct.

From April 21 to 24, 1941, the Board conducted a hearing on the petition filed by Local 22574 on March 25, 1941. At some time prior to the hearing, the Independent wrote the Board's Regional Office waiving any claim to represent employees in the smokeless powder area. Nevertheless, the respondent urged the Independent's executive board to repudiate this letter and to intervene in the representation proceeding. Lowell Jones, an Independent representative, was told by Dawson, the respondent's industrial counselor, that the latter "realized that we have not accomplished everything that we think we should have," but that there were "great possibilities there to make a go" of the Independent. Dawson also urged upon Jones that the Independent send a representative to the hearing on the following day. Hamilton, a personnel supervisor, also told Jones that representatives of the Independent were "supposed" to be at the hearing. Jones testified that the Independent decided not to intervene in the representation case because it had few members in the smokeless powder division.

On May 15, 1941, the Board issued a Decision and Direction of Election in the representation case, finding the respondent's smokeless powder division to be an appropriate unit.[18] On May 26 an election was conducted by the Board at the respondent's plant, and Local 22574 polled a majority vote among the employees in the smokeless powder division. Notwithstanding the result of the election, the respondent continued to deduct Independent membership dues from the wages of employees in the smokeless powder division, and on June 4 the respondent and the Independent signed a working agreement covering all the respondent's employees, including those in the smokeless powder division. This agreement was to remain in effect until November 15, 1942, and thereafter from year to year, in the absence of notice to modify given by either party 60

[18] *Matter of Western Cartridge Company* and *Chemical Workers Local Union No. 22574, A. F. L.*, 31 N. L. R. B. 888.

days prior to the expiration of any annual period. It confirmed the binding effect of the basic agreement and included provisions relating to wages, hours, and other working conditions. By the terms of the contract, vacations with pay were limited to those employees "who have a written Employment Contract with the Employer." At no time during the negotiations leading up to this agreement did the respondent request, or did the Independent furnish, any evidence as to the Independent's majority status.

On June 10, 1941, Local 22574 wrote to the respondent requesting a meeting to discuss the terms of an agreement. On June 13, the same day on which the Board certified Local 22574 as the exclusive bargaining representative for employees in the smokeless powder division, the respondent replied that it would not accord recognition to Local 22574 because it believed the Board's decision of May 15 erroneous in finding that the employees in the smokeless powder division constituted an appropriate unit. The respondent also stated that it had a collective bargaining contract and a working agreement with the Independent, which the respondent considered binding, and expressed its intention of seeking judicial review of the Board's decision. Shortly thereafter, at the request of the A. F. of L., the United States Department of Labor attempted, without success, to settle the dispute between the respondent and Local 22574. The dispute was then certified to the National Defense Mediation Board. Largely as a result of the efforts of that Board, the respondent, on or about July 8, 1941, incorporated the East Alton Manufacturing Company, which took over the smokeless powder division.[19] On August 2, 1941, a contract was entered into between that corporation and Local 22574 for a period of 1 year, automatically renewing for yearly periods thereafter unless notice of termination or modification is given by either party 30 days prior to the expiration of any annual period. Under the contract, Local 22574 was recognized as the exclusive representative of all employees in the smokeless powder division, with certain exceptions, and a grievance

[19] The facts relating to the management and operations of this corporation are set forth in Section II, above, of this decision.

procedure and limited seniority rules were established. The contract also contained a maintenance-of-membership clause, and provided that the individual contracts of employment then existing between the respondent and approximately 423 employees in the smokeless powder division should not be transferred to or assumed by the East Alton Manufacturing Company, nor should the latter corporation offer to any employee an individual contract or enforce any existing one. On September 29, 1941, this contract was supplemented by an agreement relating to wages and hours of employment.

In the meantime, beginning in April or May 1941, the A. F. of L. had extended its organizational activities to the western side of the respondent's plant. On August 5, 1941, a charter was granted to Local 333, which admits to membership employees in the casting shop, the brass mill, and other departments on the western side. At about the same time, the Independent revived its campaign on the western side and openly solicited membership applications and wage assignments on company property and time. In August the Independent paid $50 to one of its departmental representatives as a bonus for obtaining 200 new members, a number of whom were solicited during working hours.

4. Conclusions.

In 1933, prior to the effective date of the Act, the respondent successfully smothered the first efforts of its employees to seek self-organization.[20] As a substitute, the respondent suggested the formation of an employees representation plan and revived its former practice of having employees sign individual contracts of employment. While the suggestion to form an "inside" union was not adopted by the employees, the respondent has at all times since 1933, including the period following the effective date of the Act, made it clear to its employees that all of them were expected to sign the individual employment contracts. We have found that these contracts are violative of the

20 Although this took place prior to the effective date of the Act and therefore does not constitute an unfair labor practice within the meaning of the Act, it is relevant and material to our consideration of the respondent's subsequent activities. *N. L. R. B.* v. *Pennsylvania Greyhound Lines*, 303 U. S. 261; *N. L. R. B.* v. *The Falk Corp.*, 308 U. S. 453.

Act because they in effect restrict and limit the right of the employees to engage in concerted activity. We have also found that the respondent used the contracts to impede and discourage self-organization among its employees.

For approximately 4 years the contracts produced the desired result; no substantial effort at self-organization among the respondent's employees took place until the spring of 1937, when the C. I. O. began its activity. Immediately thereafter, organization of the Independent was begun to counteract this activity of the C. I. O. The proposed organization was first discussed with General Manager Bassett, and it is clear that his approval of the idea spurred the formation of the Independent. Similarly, Foreman Robertson's statement to Bunzy that he would get further with the Independent than with an outside union and Bassett's assurance to Taylor that the latter could safely continue his activities on behalf of the Independent made it clear that the respondent was in favor of the Independent and welcomed its formation. That the respondent favored the Independent because it would serve as a means of combating organization by an outside union and perpetuating the individual contract system is made apparent by subsequent events.

Shortly after its formation, the Independent, claiming to represent a majority of the employees at the plant, requested recognition and a written working agreement. The respondent was entirely willing to, and did, grant recognition of a kind to the Independent, but summarily rejected the proposal for a working agreement and substituted its own ideas on bargaining in the form of the so-called basic agreement. This agreement recognized the Independent, but only "with respect to all matters not covered by the contracts of employment between the company and those of its employees who have them." Thus, bargaining with the Independent was made subject to the terms of the individual contracts, which we have found to be illegal, and was restricted to matters not covered by these contracts. This was not collective bargaining within the meaning of the Act. A bargaining representative selected by a majority of the employees in an appropriate unit is, under Section 9 (a) of the Act, the exclusive repre-

sentative of all the employees in the unit with respect to all matters falling within the scope of collective bargaining, and the Act does not permit an employer to extend recognition limited to anything less than that. As we have recently had occasion to point out:

> When once a majority of the employees have exercised their right to choose a representative for concerted bargaining in an appropriate unit, the employer's statutory obligation to deal exclusively with such representative as to all terms and conditions of employment is immediate and unconditional and its performance may not be deferred or qualified by reason of any individual bargain which he may have made with his employees.[21]

The respondent and the Independent contend that, in the negotiations leading up to the basic agreement, it was their mutual desire that "nothing be done which might in any way impair the force and effect of the individual contracts," but it is clear from the record that the respondent made acceptance of the individual contracts a condition precedent to bargaining with the Independent. The condition was merely accepted by the Independent, and its acquiescence demonstrated its complete subservience to the respondent and its inability to act as a true bargaining representative for the employees. Without obtaining any agreement as to wages, hours, or other working conditions of advantage to the employees, the Independent in effect relinquished the right to strike, endorsed the individual contracts, and acknowledged that the contracts were paramount to the guarantee of collective bargaining contained in the Act. We do not believe that a *bona fide* labor organization, not dominated by the respondent, would thus have joined with the respondent in attempting to deprive its employees of their rights under the Act. We are supported in this conclusion by the fact that Local 22574, in the first contract it obtained after being recognized, provided that the individual contracts with employees in the

21 *Matter of J. I. Case Company* and *International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, C. I. O.*, 42 N. L. R. B., No. 27.

smokeless powder division be eliminated. The Independent, on the other hand, in its contract of June 4, 1941, with the respondent confirmed and continued the so-called basic agreement and made certain benefits available only to employees holding individual employment contracts.

Further indicating the respondent's domination of the Independent is the fact that the respondent failed for almost 4 years to conclude a formal working agreement with the Independent covering wages, hours, and conditions of employment. It was only after the A. F. of L. began its organizing activities in 1941 that the respondent decided to enter into such an agreement.

Having accorded recognition to the Independent, an organization acceptable to it, the respondent gave the Independent the support it believed necessary to protect the Independent's position. In the latter part of December 1940, when the Independent's membership was declining and the A. F. of L. was making plans to organize the plant, the respondent arranged for the Independent's receiving credit for obtaining a bonus increase which the respondent had unilaterally decided to give employees having individual contracts.[22] In the early part of 1941, after the A. F. of L.'s campaign had made substantial progress in the smokeless powder division, the respondent sought to prevent the spread of its influence to the western side by giving the Independent working agreements covering the brass mill and the casting shop. At about the same time, Elliott, the Independent's departmental representative in the casting shop, was urged by Personnel Supervisor McCauley and Superintendent Day to strengthen the Independent and either to become more active as the Independent's representative or to resign and let someone else take his place. As hereinafter found, Elliott was subsequently discharged because he withdrew from the Independent and joined Local 333.

While the respondent was assisting the Independent, it discouraged employees in the smokeless powder division who were desirous of being represented by Local 22574, by displaying its hostility toward that union, by disparaging

[22] Cf. *Matter of The Western Union Telegraph Company* and *American Communications Association*, 17 N. L. R. B. 34, enf'd as mod., *Western Union Telegraph Co.* v. *N. L. R. B.*, 113 F. (2d) 992 (C. C. A. 2).

its leadership, by urging the withdrawal of its adherents, and by advising employees to vote against Local 22574 in the Board election of May 26, 1941. When Local 22574 first requested recognition in March 1941, the respondent demanded that it first be certified by the Board. In the subsequent representation proceeding, the respondent urged the Independent to intervene, notwithstanding the fact that the Independent had previously disclaimed any interest therein. After the Board had certified Local 22574 as the bargaining representative of the employees in the smokeless powder division, the respondent refused to honor the Board's certification and to accord Local 22574 the recognition to which it was entitled under the Act, until induced to do so by the National Defense Mediation Board. In addition, even though the employees in the smokeless powder division had selected Local 22574 as their representative in the Board election of May 26, the respondent continued to recognize the Independent as the representative of those employees, and on June 4, 1941, without requesting or receiving any evidence as to the Independent's representative status, concluded a working agreement with the Independent covering all employees, including those in the smokeless powder division. We are convinced, and we find, that by its entire course of conduct, as described above, the respondent encouraged, supported, and maintained the Independent in order to impede and, if possible, prevent genuine self-organization of the respondent's employees. Such an organization is incapable of functioning as a true collective bargaining representative.

We find, as did the Trial Examiner, that the respondent, by the foregoing acts, dominated and interfered with the formation and administration of the Independent, and contributed support to it, and thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.[23]

[23] The complaint also alleges that the respondent attempted to instigate the formation of Western Cartridge Employees Association. The record shows that in May 1941 some of the respondent's nonsupervisory employees attempted, without success, to form the Association. The Trial Examiner has found that the respondent did not instigate its formation and no exception has been taken to this finding. We have considered the record, and we agree and find that the evidence does not support this allegation of the complaint.

B. *The discriminatory discharge of William Elliott.*

William Elliott first came to work for the respondent in 1925. His last regular period of employment was from November 1930 to July 25, 1941, when he was discharged. During the last several months of his employment he worked as a metal caster in the casting shop.

Elliott joined the C. I. O. in 1937 when it began to organize at the respondent's plant, but shortly thereafter, upon formation of the Independent, he joined the Independent, and in 1941 he became the Independent's representative for the casting shop. As we have found above, in the spring of 1941, while Elliott was the Independent's departmental representative for the casting shop, Personnel Supervisor McCauley and Superintendent Day urged him to make the Independent a success and to become more active as a representative. In the early part of July 1941, Elliott resigned from the Independent and canceled his wage assignment authorizing the respondent to check off dues for the Independent. Shortly thereafter he joined Local 333 and, at a meeting of that organization on the evening of July 23, 1941, he was made its temporary financial secretary. On the following morning, Elliott told Foremen Andrus and Groessman, who already knew the names of some of the officers of Local 333 elected on the preceding evening, that he also had been elected to office in that organization.

During the latter part of July 1941, the respondent announced a proposed change in shift schedules for the casting shop and had the foremen poll the employees on whether they favored the change. When Elliott was asked his opinion of the proposal, he informed Foreman Terry that he opposed the change. Shortly thereafter, on the evening of July 22, Night Supervisor Carlton asked Elliott why he opposed the change, and Elliott replied by saying that it would cause the employees to lose money and by criticizing the manner of taking the vote, stating that it should have been by secret ballot. On the following morning, July 23, Carlton reported to Superintendent Day the statements made by Elliott concerning the proposed change

in shifts, as set forth above,[24] and stated, "I don't see how you can run a cast shop with a man talking that way all the time." Day then decided to take some disciplinary action against Elliott, and sent for him. Elliott reported to Day's office on July 25 and was discharged. According to Day, he told Elliott that he was being discharged because of his continued complaints about working conditions and because of his criticism of the management. Elliott testified that, when he asked why he was being discharged, Day brought up the subject of the Independent, and said, "You stuck me in the back, and let me down," which Elliott understood had reference to his refusal to support the Independent, as Day had previously urged him to do. Day denied at the hearing the statement attributed to him by Elliott, but admitted telling Elliott at the time of his discharge that Elliott "was interfering [by] his conversations with the people [employees] that the agreement with the Independent Union was not bona fide . . ." Moreover, Day also admitted at the hearing that Elliott's failure, as the Independent's representative, to present grievances of employees, was a factor contributing to his discharge because it tended to indicate his attitude toward the company. We find, as did the Trial Examiner, that Day made the statements attributed to him by Elliott.

Immediately after his discharge by Day, Elliott spoke to Frank Shotters, the respondent's general superintendent, and accused the respondent of discharging him because of his membership in Local 333. Shotters then denied knowing that Elliott was a member of Local 333 or that his membership was the reason for his discharge, but said that Elliott was discharged for making "insinuating" remarks about the respondent. This led to a discussion of Elliott's claim that the respondent owed him money and was not dealing fairly with its employees. Finally, Shotters told Elliott that there was nothing the respondent could do for him, and the conversation ended.

On the same day, Elliott's wife, who was employed in the brass mill office, was also discharged. Frank Kratsch-

[24] In addition, Day testified that, according to Carlton's report to him, Elliott had also said that the respondent was continuing its policy of trying to "rob" the employees.

mer, office manager, testified that he discharged Mrs. Elliott because he did not think she was "doing her work." The record shows, however, that the decision to discharge Mrs. Elliott, was made by Day, not Kratschmer. Day testified that she was discharged because he suspected her of supplying her husband with figures on casting shop production which he was using to support demands for wage increases. Mrs. Elliott was reinstated with back pay about a week later in another department of the plant, at substantially equivalent work. The reinstatement was made on orders from Shotters and after an interview with the Regional Director for the Board.

Concerning the reason for Elliott's discharge, the respondent contended at the hearing, although it did not allege in its answer, that Elliott's criticism of the respondent's policies created dissatisfaction among the employees in the casting shop and impaired their efficiency. Day testified that in June 1941 production in the casting shop was lower per man than it had ever been, that the quality of the metal produced was poor, and that, in his opinion and in the opinion of the foremen, this condition was due to the general indifference of the employees and to their failure to carry out instructions. All of this they attributed to the dissatisfaction created in the shop by the critical statements of Elliott and Burdette Williams, who worked the same shift as Elliott and whose alleged discriminatory discharge is discussed below. We are not convinced, nor was the Trial Examiner, by Day's testimony or by the testimony of other witnesses for the respondent who also described conditions in the casting shop, that Elliott was responsible for slowing up production or for the poor quality of the work in the casting shop. Elliott's own work is admitted by the respondent to have been satisfactory. No showing is made in the record that Elliott's attitude toward and remarks about the respondent and working conditions were in fact the cause of the other employee's bad work, or that there was any reasonable basis for the respondent's believing so. It is as reasonable, for example, to attribute the alleged decrease in production to the widespread dissatisfaction with working conditions which Day admitted existed, as to Elliott's attitude and remarks.

The respondent also contended at the hearing, although it had not alleged in its answer, that the immediate reason for Elliott's discharge was his criticism of the respondent as to the change in shift schedules, in his discussion with Carlton on July 22. As pointed out above, the respondent expressly invited the opinions of its employees on the proposed change, and Elliott gave his in an outspoken manner. Moreover, the views expressed by Elliott on this occasion were no different from those which he had previously made known to the respondent. In February 1941, when Day first became superintendent, he heard of Elliott's reputation as a critic of the management and, because of it, asked Elliott why there was such dissatisfaction among employees in the casting shop. Elliott replied that it was due to the attitude of the former superintendent, to the respondent's failure to promote employees in accordance with seniority, and to the fact that the employees had allegedly been cheated out of money both under the bonus system and because of its abandonment.[25] The record shows that for several years Elliott had entertained a strong conviction that the respondent owed him, and other employees, money as a result of the operation of the bonus system, and that on a number of occasions he discussed his claim with and stated his position to the former superintendent of the shop and Day. Apparently the respondent did not attach any particular significance to his position, at least while he was a member of the Independent.

Thus, it appears that the respondent knew and accepted Elliott as an outspoken and critical employee and expressed no disapproval of his critical attitude until he abandoned the Independent and became active in Local 333. This change of affiliation on his part was, in our opinion, the reason for the respondent's belated decision that Elliott's critical attitude warranted his discharge, despite his long employment with the respondent and his satisfactory production record.

Upon the entire record, and especially in view of the respondent's unconvincing explanation of the discharge,

[25] Under the bonus system, employees received extra compensation based on the amount of their production. In the early part of 1939 the bonus was discontinued and employees were put on a straight hourly basis.

Elliott's failure to heed the respondent's requests to support the Independent, his subsequent joining and becoming an officer of Local 333, Day's admission at the hearing that Elliott's failure to act as the Independent's representative was a factor motivating his discharge, and Day's remarks to Elliott at the time of his discharge, we find that Elliott's critical attitude was used by the respondent as a pretext to justify his discharge. We further find, as did the Trial Examiner, that Elliott was discharged on July 25, 1941, because of his withdrawal from the Independent and because of his membership in and activity on behalf of Local 333. By thus discharging Elliott, the respondent discriminated with regard to his hire and tenure of employment, and thereby discouraged membership in Local 333, and interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

C. *The other discharges and transfers.*

Burdette Williams was employed by the respondent for approximately 7 years prior to his discharge on July 24, 1941. On that day, Superintendent Gerding of the casting shop told Williams that he was being dismissed because of his low production and because of his failure to obey instructions. Williams joined Local 333 in June 1941 and wore his union button to work. He was elected a trustee of Local 333 at the meeting of July 23, 1941, at which Elliott and others were also elected to office.

Superintendent Day testified at the hearing that the decision to discharge Williams was based on a number of complaints by his superiors as to his work and his attitude. As a result of these complaints, Day called a meeting in his office on June 26, 1941, attended by Superintendent Gerding, Foremen Andrus and Jones, and Personnel Managers Irish and Krinard. There is uncontradicted testimony that at this meeting complaints were made that Williams refused to take orders and was generally defiant, that he did not operate his furnace properly, that he refused to puddle or to skim his metal, that he would not sign rejection slips for faulty metal, and that his produc-

tion was low. Andrus, Gerding, and Jones recommended at this meeting that Williams be discharged immediately, but at the suggestion of Irish it was decided to give Williams a chance to improve his work. Jones then told Williams that he would have to obey instructions and increase his production, or he would be discharged.

Day testified that, after Williams had been given this warning, he checked Williams' production for July and found that it continued to be low. According to Day, the respondent's record showed that during the months of May, June, and July 1941, Williams' production was the lowest of the four casters on his shift and that there was a 12 percent disparity between his output and that of the highest producer. The record indicates that this differential was abnormally high. Day further testified that, after the meeting of June 26, Gerding and Jones reported to him that there had been no improvement in Williams' work. Gerding and Jones also testified at the hearing to Williams' failure to improve.

Williams claimed at the hearing that a number of the complaints against him were not well founded, but admitted that he had refused, for certain reasons, to sign rejection slips, and that on occasion he had possibly failed to do some of his work. Williams also contended that his low production record was due to the fact that he was given an inexperienced helper.

Under the circumstances, we are not convinced that the complaints against Williams were unjustified or that they were not the reason for his discharge. We find that the record does not sustain the allegation in the complaint that Williams was discharged because of his union membership and activity. We therefore sustain the respondent's exceptions to the Trial Examiner's Intermediate Report insofar as he has found that Williams' discharge was discriminatory, and we shall dismiss the complaint as to Williams.

The complaint, as amended, also alleges that the respondent discriminatorily discharged Richard Main, James Oglesby, Francis Bunzy, and Raymond Clark, and that it discriminatorily transferred Arthur Williamson and Jack Otten. In his Intermediate Report the Trial Examiner, after discussing in detail the cases of the above-named em-

ployees, found that the record did not establish that they had been discriminated against because of their union activities and recommended that the complaint be dismissed as to them. The A. F. of L. has filed no exceptions to the Trial Examiner's findings and recommendation. We have considered the entire record and we agree with the conclusions of the Trial Examiner in this respect. We shall therefore dismiss the complaint, as to Richard Main, James Oglesby, Francis Bunzy, Raymond Clark, Arthur Williamson, and Jack Otten.

IV. The effect of the unfair labor practices upon commerce.

The activities of the respondent set forth in Section III, A and B, above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The remedy.

Having found that the respondent has engaged in certain unfair labor practices, we shall order it to cease and desist therefrom and to take affirmative action designed to effectuate the policies of the Act.

We have found that the respondent dominated and interfered with the formation and administration of the Independent and contributed support to it. In order to effectuate the policies of the Act and free the employees of the respondent from such domination and interference, and the effects thereof, which constitute a continuing obstacle to the exercise by the employees of the rights guaranteed them by the Act, we shall order the respondent to withdraw all recognition from the Independent as the representative of any of the respondent's employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, and conditions of employment, and completely to disestab-

lish it as such representative. The agreements between the respondent and the Independent are an integral part of the respondent's unfair labor practices and prevent full enjoyment by the respondent's employees of their rights under the Act. We shall, therefore, further order the respondent to cease and desist from giving effect to any and all outstanding agreements with the Independent, as well as to any extension, renewal, modification or supplement thereof. Nothing in this Decision or in our Order shall be taken, however, to require the respondent to vary those wage, hours, and other substantive features of its relations with the employees, themselves, which the respondent has established in the performance of such agreements.

We have also found that the individual contracts of employment signed by the respondent's employees interfered with, restrained, and coerced them in the exercise of the rights guaranteed in Section 7 of the Act. To free the respondent's employees from this restraint and interference, we shall order the respondent to cease giving effect to these contracts and to give written notice to each employee who signed such a contract that the respondent will not in any manner enforce or attempt to enforce the contract, that the employee is not required or expected to deal individually with the respondent or to relinquish in any manner his right to engage in concerted activity because of the contract, and that discontinuance of the contract is without prejudice to the assertion of any legal rights the employee may have acquired under it. This part of our Order will extend to any modification, continuation, extension, or renewal of the individual contracts.

We have further found that the respondent discriminatorily discharged William Elliott on July 25, 1941. We shall, therefore, order the respondent to offer Elliott immediate and full reinstatement to his former or a substantially equivalent position, without prejudice to his seniority and other rights and privileges, and to make him whole for any loss of pay he may have suffered by reason of the respondent's discrimination against him, by payment to him of a sum of money equal to the amount which he normally would have earned as wages from the date of his

discriminatory discharge, July 25, 1941, to the date of the respondent's offer of reinstatement, less his net earnings during such period.[26]

Upon the foregoing findings of fact and upon the entire record in the case, the Board makes the following:

CONCLUSIONS OF LAW.

1. Chemical Workers Local Union No. 22574, and International Molders and Foundry Workers Union of North America, Local No. 333, both affiliated with the American Federation of Labor, and Western Cartridge Employees Independent Union, unaffiliated, are labor organizations, within the meaning of Section 2 (5) of the Act.

2. By dominating and interfering with the formation and administration of Western Cartridge Employees Independent Union and contributing support to it, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (2) of the Act.

3. By discriminating in regard to the hire and tenure of employment of William Elliott and thereby discouraging membership in International Molders and Foundry Workers Union of North America, Local No. 333, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

4. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

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[26] By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company* and *United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers Union, Local 2590*, 8 N. L. R. B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered as earnings. See *Republic Steel Corporation* v. *N. L. R. B.*, 311 U. S. 7.

6. By discharging Burdette Williams, Richard Main, James Oglesby, Francis Bunzy, and Raymond Clark, and by transferring Arthur Williamson and Jack Otten, the respondent did not engage in unfair labor practices, within the meaning of the Act.

ORDER.

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Western Cartridge Company, East Alton, Illinois, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Giving effect to its individual contracts of employment with employees or to any modification, continuation, extension, or renewal thereof, and from requesting its employees to enter into any similar contracts of employment;

(b) Dominating or interfering with the administration of Western Cartridge Employees Independent Union or with the formation or administration of any other labor organization of its employees, and from contributing support to Western Cartridge Employees Independent Union or to any other labor organization of its employees;

(c) Recognizing Western Cartridge Employees Independent Union as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, rates of pay, wages, hours of employment, or other conditions of employment;

(d) Giving effect to its agreements of August 12, 1937, March 18, 1941, and June 4, 1941, or to any other contracts or agreements it may have entered into with Western Cartridge Employees Independent Union in respect to rates of pay, wages, hours of employment, or other conditions of employment;

(e) Discouraging membership in International Molders and Foundry Workers Union of North America, Local No.

333, affiliated with the American Federation of Labor, or in any other labor organization of its employees, by discriminating in regard to the hire or tenure of employment or any term or condition of employment of any of its employees;

(f) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Withdraw all recognition from Western Cartridge Employees Independent Union as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and completely disestablish Western Cartridge Employees Independent Union as such representative;

(b) Offer William Elliott immediate and full reinstatement to his former or a substantially equivalent position, without prejudice to his seniority and other rights and privileges;

(c) Make whole William Elliott for any loss of pay he may have suffered by reason of the respondent's discrimination against him, by payment to him of a sum of money equal to the amount he would normally have earned as wages from July 25, 1941, the date of his discharge, to the date of the respondent's offer of reinstatement, less his net earnings during such period;

(d) Give separate written notice to each of its employees who has signed an individual contract of employment, or any modification, continuation, extension, or renewal thereof, that the respondent will not in any manner enforce or attempt to enforce the contract, that the employee is not

required or expected because of the contract to deal individually with the respondent or to relinquish in any manner his right to engage in concerted activity, and that discontinuance of the contract is without prejudice to the assertion of any legal rights the employee may have acquired under it;

(e) Post immediately in conspicuous places throughout its plant at East Alton, Illinois, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) to (f) of this Order; (2) that the respondent will take the affirmative action set forth in paragraphs 2 (a) to (d) of this Order; and (3) that the respondent's employees are free to become or remain members of Chemical Workers Local Union No. 22574, or International Molders and Foundry Workers Union of North America, Local No. 333, both affiliated with the American Federation of Labor, and that the respondent will not discriminate against any employee because of membership in, or activity on behalf of, said organizations;

(f) Notify the Regional Director for the Fourteenth Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith;

And It Is Further Ordered that the complaint be, and it hereby is, dismissed insofar as it alleges that the respondent discriminated against Burdette Williams, Richard Main, James Oglesby, Francis Bunzy, Raymond Clark, Jack Otten, and Arthur Williamson.

Signed at Washington, D. C., this 16 day of September 1942.

THE EVIDENCE.

* * * * * * *

7 Mr. McRoberts: Mr. Examiner, I would like to move that the complaint and charge be made more definite and certain by specifying the names of the affiliated organizations who are making the charge and against whom it is alleged that the respondent discriminated and violated the Act, for the reason that
8 it is not clear from the charge or from the complaint which labor unions or labor organizations are making the charge or have been or alleged to have been discriminated against. It is also not shown what interest these unnamed affiliated organizations have in the proceedings.

* * * * * * *

10 Mr. McRoberts: If I might add just a word to my prior motion and call the Examiner's attention particularly to page 3 of the complaint, it is charged that we discharged and transferred some employees because they had joined a union and in paragraph 6 that we discouraged and "is discouraging" membership in the union, but we are not told what union we discriminated against or discouraging membership in.

* * * * * * *

Trial Examiner Ruckel: * * *

Now, with respect to respondent's motion to make the complaint more definite by naming the affiliated
11 labor organizations referred to in the complaint, the motion is denied.

I think that the complaint is sufficiently definite to permit the respondent to prepare its defense. The defense to any evidence of 8 (1) declarations, for example, would be the same irrespective of what particular labor organizations were in the picture. Such statements, if made, are deemed to be in violation of the Act, and their effect, if not taken for granted, is taken to be immaterial. The question is, were certain statements or allegations made, and I think it is immaterial whether there happens to exist in the plant one particular craft organization or some other craft organization.

I assume that the evidence, as it goes along, will show the existence, possibly, of several craft organizations in the plant, all affiliated with the American Federation of Labor. However, if at any time during the testimony, if the respondent claims surprise because of prior lack of information as to the name of some particular craft organization, the Trial Examiner will entertain a motion for an adjournment or recess to permit counsel to obviate the effects of such surprise, if any.

Are there any further motions?

Mr. Evans: There are one or two formal changes which I would like to make in the complaint, Mr. Examiner.

12 On page 2 of the complaint, Line 7 of paragraph numbered 3, I would like to substitute the word "respondent" for the word "company."

On page 3 of the complaint, Line 2 of the first full paragraph on that page, I would like to strike the word "and" between the names Richard Main and James Oglesby, and substitute a comma.

On page 4 of the complaint, Line 2 of the first full paragraph, which appears about midway on the page, I would like to eliminate the semicolon after the word "agreement" and substitute therefor a comma.

Trial Examiner Ruckel: What line and what page?

Mr. Evans: Line 2 of the first full paragraph.

Trial Examiner Ruckel: On page 4?

Mr. Evans: That is right, beginning with the words "on or about August 12, 1937, respondent did enter into a contract with WCEIU, known as the basic agreement." Instead of a semicolon following the word "agreement," I wish to insert a comma.

On page 5, line 5 of paragraph numbered 10, I would like to insert the word "to" between the words "and" and "engage."

Trial Examiner Ruckel: Are there any objections to the motion to correct the complaint in the main respects?

Mr. McRoberts: No objection.

13 Trial Examiner Ruckel: Motion allowed.

* * * * * * *

14 FRED OLDS,

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Evans) Will you state your name and where you live, please?

A. Fred Olds. I live at 605 North 28th Street, East St. Louis, Illinois.

Q. What is your position?

A. Organizer for the American Federation of Labor.

Q. Have you ever participated in the organization of employees of respondent?

A. I did.

Q. And about when did that begin?

A. The organizing activities first began along in the latter part of December, when I first had a meeting at all with anyone, and then—

Q. December of what year?

15 A. 1940. I met with one individual at that time. There was no further activity until in January, about the middle of January, 1941, when I met with Francis Bunzy and Emmert E. Anderson.

* * * * * * *

133 ROBERT CARROLL,

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Evans) Will you state your name and where you live, please?

A. Robert Carroll, 3309 Hillcrest, Alton.

* * * * * * *

141 Q. Do you know a man by the name of Pivoda?

A. Yes, sir.

Q. Does he work for the company?

A. He works over at the powder mill.

Q. Did you ever have a conversation with him?

A. Yes, sir.

Q. About when?

A. Well, it was along last spring, early; I don't remember the exact date or month. I would say along in—oh, it must have been along in June, sometime, something like that.

Q. What was Mr. Pivoda's position?

A. Well, he has charge of the trucks; truck drivers.

Q. Were you working under him at the time?

A. No.

Q. Were you working in the smokeless powder division at that time?

A. Yes; I was working as pipefitter helper in the
142 plant department.

Q. Was Mr. Pivoda foreman in the plant department?

A. No; he is foreman over the trucks and drivers. He has charge of the trucks.

Q. That is not a part of the plant department?

A. No.

Q. Was anybody else present at the time?

A. Yes; John Theis, the fellow that works with me.

Q. What was the conversation?

A. Well, we were talking about a couple of fellows he had working for him, driving a truck, and he said that Wortz give him these two men—

Q. Who is Wortz?

A. He is superintendent of the powder mill.

Q. Go ahead.

A. He said he sent these two men out there to him and told him they were good men, but they were awful strong union men and it was up to him to break that up, and he said that they were good workers and done their work right, so he just didn't say anything to them.

Q. Did he mention the names of the two union men that had been sent to him?

A. No; he didn't call their names at all.

Mr. Evans: That is all.

* * * * * * *

147 Mr. Evans: That is all.

Mr. McRoberts: No questions.

Trial Examiner Ruckel: That is all.

(Witness excused.)

* * * * * * *

ORVILLE M. AUGHENBAUGH,

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Evans) Will you state your name and where you live?

A. Orville Marion Aughenbaugh.

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157 Q. After you became secretary-treasurer, was there any discussion with respect to obtaining new members?

A. Yes, sir.

Q. And when did that occur?

A. I don't know the exact date on that. We had several discussions on bringing new members in. It was brought up several times.

Q. At any time did you discuss the matter with any representatives of the company?

Q. We had a meeting on that, the representatives of the union, and finally discussed to hold a meeting with the company to see if there was some way that they could help us out, to bring our membership up.

Q. Was such a meeting held with the company representatives?

A. Yes; there was.

Q. And when did that occur?

A. I would say that would be in November.

Q. 1940?

A. In 1940; yes, sir.

Q. What was said at that meeting, do you recall?

A. Yes, sir. Mr. Bassett said he would keep that in mind, and—

Trial Examiner Ruckel: Keep what in mind; would
158 keep what in mind?

The Witness: Of some way to help build our membership up in the Independent Union.

Trial Examiner Ruckel: Well, start at the beginning and tell us what happened. To whom did he reply when he

made that statement? Did somebody from the union say something to him?

The Witness: The full amount of the board of the Independent Union was present at the meeting with the company representatives.

Trial Examiner Ruckel: Who was the spokesman? Who was the spokesman?

The Witness: Of the meeting?

Trial Examiner Ruckel: Of the committee.

The Witness: Richard Harting.

Mr. Evans: Is that H-a-r-t-i-n-g?

The Witness: Yes, sir.

Trial Examines Ruckel: Did he speak to Mr. Bassett?

The Witness: Yes, sir.

Trial Examiner Ruckel: What did he say?

The Witness: Sir?

Trial Examiner Ruckel: What did Mr. Harting say?

The Witness: Well, we brought out the things that our membership was falling off.

Trial Examiner Ruckel: That is, he did, you mean?

159 The Witness: Yes, sir.

Mr. McRoberts: By "he" who do you mean?

The Witness: Mr. Harting.

Mr. McRoberts: Mr. Harting?

The Witness: He was talking to the company representatives at the time, and it was really falling off a lot, and he said—he explained it all to them why it was falling off, that the people was dropping out, and then at the end of the meeting Mr. Bassett said he would keep it in mind.

Trial Examiner Ruckel: Keep what in mind?

The Witness: To do something to keep the membership up.

Trial Examiner Ruckel: Did Mr. Harting ask Mr. Bassett to do anything about that?

The Witness: No; he didn't ask him to do anything.

Trial Examiner Ruckel: Well, Harting said to Mr. Bassett that your membership is falling off. Did he say anything further?

The Witness: Yes.

Trial Examiner Ruckel: Did he make any suggestion as to anything the company should do about it?

The Witness: Not at the time; no, sir.

Trial Examiner Ruckel: Go ahead.

Q. (By Mr. Evans) Did you talk to Mr. Bassett alone at any time about the situation?

160 A. No; I don't believe there was.

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162 Q. (By Mr. Evans) Were you called into the office at any time about a bonus increase?

A. Yes, I was.

Q. When did that occur?

A. That was in December, 1940.

Q. To what office were you called?

A. The main office.

Q. Who was there?

A. Mr. Chapman.

Q. Who is Mr. Chapman?

A. He was chairman of our independent union at that time; President.

Q. Who else was there?

A. Mr. Bassett, Mr. Dawson, Mr. Haddelton.

Q. Who is Mr. Haddelton?

A. Personnel manager. The other man, I couldn't tell you his name. He is with the Company, but I don't know.

Q. What was said and what happened at that meeting?

A. We were asked to help build our membership up.

Trial Examiner Ruckel: Read the answer so far.

(Answer read by reporter.)

A. We had asked the Company to help us out in building our membership up in the independent union. They called Mr. Chapman, Chairman, President, of the Independent union and myself, Secretary-Treasurer of the

163 independent union, to discuss the two per cent bonus that the Company wanted to give employes of the Western Cartridge.

Q. (By Trial Examiner Ruckel) What did that have to do with this meeting at which you were discussing about building the membership up?

A. The way it was Mr. Bassett left the meeting right away on business, and I think Mr. Dawson took over the meeting from there on; and they seemed to think if we got credit for the two per cent bonus that was given out it would bring our membership up, showing the union was

trying to do something for members of the union, and if the union got credit for it it would build our membership up.

Mr. McRoberts: Mr. Examiner, I move that the answer be stricken, and he should be compelled to state what someone said, and he is telling what they seemed to think.

Q. (By Trial Examiner Ruckel) Who made that suggestion? Whose suggestion was that?

A. Sir?

Q. This suggestion was made at this meeting, is that right?

A. Yes.

Q. That if the union were to be given credit for the two per cent bonus it would help strengthen the union. Whose suggestion was that?

A. I guess it was the Company, which Mr. Bassett was superintendent of at the time.

164 Q. Which person there made the suggestion? What individual or what persons?

A. Mr. Bassett. He was the head of the meeting starting out, so he would be the one to make the suggestion.

Q. Not necessarily. Did he make the suggestion or did some other person present make it?

A. Mr. Bassett made the suggestion of two per cent bonus.

Q. What did he say when he made the suggestion?

A. He wanted to know what Mr. Chapman and myself thought of it.

Q. Did you tell him?

A. Yes.

Q. What did you tell him?

A. I told him I didn't think a whole lot of it.

Q. Give us the whole conversation.

A. The way it was they offered us two per cent bonus, and we had been asking for raises for the last year and a half for the whole group, and I thought that was very low —two per cent—so Mr. Chapman made the statement he thought it would be all right, so then I came out and asked him why they couldn't pay off right away and give it to the people in advance, instead of waiting for it, and he said it couldn't be done that way.

Q. (By Mr. Evans) Was this increase of bonus to be applied to the individual contracts?

165 A. That is right.

Q. Those were yearly contracts?

A. Yes, sir.

Q. Did they expire on January 1st or different dates throughout the year?

A. Different dates throughout.

Q. So the two per cent bonus would not apply until the next contracts were signed?

A. That is right.

Q. Was there anything discussed about the posting of a notice on this bonus?

A. Yes, Mr. Dawson helped Mr. Chapman to make out a bulletin to put on the board before the Company came out with it, to give a chance so the independent union would get credit for it, and Mr. Chapman took it from there on out.

Q. What do you mean by that?

A. Him and Mr. Dawson got together and fixed up some kind of a thing for the bulletin board to show about the two per cent, and I wasn't with them during that time.

Q. Was such a notice posted?

A. Yes, sir.

Q. How soon after this meeting?

A. I believe it was the next day, if I am not mistaken.

Q. Do you recall what the notice stated?

A. No, I can't.

166 Mr. Evans: That is all.

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167 Q. Was it the practice as between the representatives of the Company and the representatives after they had had one of these meetings to write up minutes of the meetings?

A. Yes sir.

Q. At the next meeting, or sometime afterwards, they would pass them around and have everybody approve of the minutes, and they would all sign them?

A. That is right.

Q. And the union would keep a copy and the Company would keep a copy?

A. That is right.

Q. Was there more than one meeting held in November, 1940, Mr. Aughenbaugh, between representatives of the union and representatives of the Company?

A. I couldn't recall. I believe there was. Not with the full amount of the representatives, no sir.

Mr. McRoberts: Mark this, please, for identification.

168 (Said document was thereupon marked, for identification, "Respondent's Exhibit No. 1.")

Q. Mr. Aughenbaugh, I will show you a paper which has been identified as Respondent's Exhibit Number 1, and ask you just what that is?

A. Which paragraph?

Q. The whole paper. This is a copy of the minutes of the meeting of November 2, 1940, between representatives of the Company and representatives of the union, is it not?

A. Yes sir.

Q. And on the second page is that your signature?

A. Yes sir.

Q. Among the other representatives of the union?

A. Yes sir.

Q. And that would indicate these minutes were correct as far as you knew at the time when you signed them?

A. Yes, that is right.

Q. I will point out to you the top of the second page, and ask you if it does not say the purpose of the meeting was to discuss and to ask the Company's consideration in granting a general increase in wages to all employes; is that what was taken up at the meeting, or one of the things that was taken up at the meeting?

A. That is right, yes.

Q. In reply to that the next sentence points out Mr.
169 Bassett stated the Company would not grant a general increase, that is correct, isn't it?

A. That is correct.

Q. I will ask you to look through those minutes and see if you find anything in those minutes about the union asking the Company to help with its membership and Mr. Bassett saying he would take the matter under consideration, or anything to that effect?

A. You will not find that in the minutes, I will tell you that without looking.

Q. When was it you say this discussion took place about a bonus of two per cent, to be granted to the holders of the contracts?

A. I don't know the exact date. I know it was round Christmas—before Christmas.

Q. Sometime before Christmas?

A. That is right.

Mr. McRoberts: Mark this, please.

(Document was thereupon marked, for identification, "Respondent's Exhibit Number 2.")

Q. I will show you Respondent's Exhibit Number 2, and ask you if that is the notice which was subsequently posted or distributed to the members of the independent union with respect to that bonus?

A. Yes sir.

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171 Trial Examiner Ruckel: Any questions by the independent union?

Mr. Ely: Yes.

Q. (By Mr. Ely) What was the proposition you said Mr. Bassett made about helping increase the membership?

A. What did you say?

Q. What did you say Mr. Bassett said about helping you increase your membership in the union?

A. He said he would keep that in mind.

Q. Keep what in mind?

A. That in mind; figure out some way to build our membership up.

Q. Who asked him to do that?

A. Members of the independent union.

Q. What members of the independent union?

A. The representatives.

Q. What are the names of men that asked anything like that?

A. We did; the whole five or six.

Q. Who spoke for the five or six?

172 A. Mr. Harting.

Q. Richard Harting?

A. Yes.

Q. Where did that take place?

A. In the main office.

Q. Main office what?
A. Cafeteria.
Q. When?
A. I don't know the exact date on that.
Q. Who else was there besides you and Mr. Harting and Mr. Bassett?
A. Mr. Chapman and Mr. Tice.
Q. Was anything said about bonus at that time?
A. No.
Q. Mr. Chapman, Mr. Harting, Mr. Tice, you and Mr. Bassett; anybody else?
A. And Mr. Jones.
Q. What Jones is that?
A. Lowell Jones.
Q. That was in the cafeteria?
A. Yes, sir.
Q. You and each of you or several of you asked Mr. Bassett what he could do toward helping increase membership in the union?
A. That is right.
173 Q. And he said he would keep it in mind?
A. Yes, that is right.
Q. Did you ever talk to him about it again?
A. No, sir.
Q. Did he ever mention it to you again?
A. Not until this two per cent bonus came up.
Q. When was it this two per cent bonus came up, with reference to the time you had the conversation?
A. It was before Christmas; I don't know the exact date.
Q. How long after this conversation in the cafeteria?
A. It wasn't long.
Q. How long? You might not think a week is long. You are the same fellow that said he joined the C. I. O. in 1933, aren't you?
A. Fifteen or twenty days, I would say.
Q. Fifteen or twenty days?
A. Yes, sir.
Q. Do you know how the Company happened to grant this bonus? Did Mr. Bassett have anything to do with it?
A. He was the one that made the offer, and it was up to us. We couldn't refuse or accept, either one—we had to accept it.

Q. That is not the question: Do you know whether Mr. Bassett persuaded the Company to grant you a bonus, or do you know anything about that?

174 A. Mr. Bassett made the statement they met with the Board and talked it over.

Q. Talked what over?

A. About two per cent bonus, and that is how it was brought around.

Q. He didn't say anything was said at that time about helping the independent union to increase its membership?

Trial Examiner Ruckel: You mean at the Board meeting?

Mr. Ely: Yes.

A. He thought that would help us out. Mr. Bassett left the meeting before it was all over with, and Mr. Dawson took over then from then on.

Q. He said he thought that two per cent bonus would help the union increase membership?

A. If the independent union got the notice up first. Mr. Dawson made the statement.

Q. Where was that statement made?

A. The same place.

Q. What is the same place?

A. The main office.

Q. Cafeteria?

A. No, it wasn't the cafeteria. There are so many offices there I couldn't tell you which one it was.

Q. When was it?

A. Before Christmas.

175 Q. Who was present when Mr. Dawson was supposed to have made that statement? Was Mr. Chapman there?

A. Yes.

Q. Was Mr. Harting there?

A. No.

Q. Anybody else besides Chapman?

A. Myself.

Q. Anybody else?

A. No.

Q. You were then a representative, were you?

A. I was Secretary-Treasurer and representative.

Q. What was Harting's office at that time, if any?

A. The rest of the Board got plenty hot at us—

Q. That is not what I asked you. I asked you what was Harting's office, and not about temperature. What was his office at that time?

A. He was representative.

Q. You say when Mr. Dawson made this remark there was not anybody present but you and Chapman?

A. That is right.

Q. Did you go and tell Mr. Harting about Mr. Dawson making that remark?

A. They found it out before we got to them.

Q. How do you know they found it out?

A. Because we got hell.

176 Q. From who?

A. From the rest of the Board.

Q. You and Chapman did?

A. Yes, sir.

Q. (By Trial Examiner Ruckel) The Executive Board of the independent union?

A. Yes, sir.

Q. (By Mr. Ely) Did you tell Harting that Dawson had made that statement?

A. I said the Company was offering—

Q. I say did you tell him Dawson made the statement that ought to help increase your membership?

A. Yes, sir.

Q. Who was present when you told Harting that?

A. It was at our next joint meeting we had at our independent union office when it was brought up.

Q. Was Chapman there?

A. The whole Board.

Mr. Ely: That is all.

Q. (By Mr. McRoberts) What happened was this, you were demanding a general wage increase?

A. That is right.

Q. And they offered you a two per cent bonus?

A. That is right.

Q. And you objected to that at first?

177 A. Yes, sir.

Q. You said that was not enough?

A. Yes, sir.

Q. Some of the other men thought it was enough?

A. Mr. Chapman was the only one.

Q. Mr. Chapman thought it was enough?

A. He didn't say enough, but he thought it was better than we had.

Q. You did not think two per cent was enough?

A. No.

Q. That is all the union could get at the time, so you took it, is that right?

A. We had to take it.

Mr. McRoberts: That is all.

Redirect Examination.

Mr. Evans: May I have that notice that you identified as Exhibit number 2?

Mr. McRoberts: Yes.

Q. (By Mr. Evans) Mr. Aughenbaugh, had there been any mention of bonus in your negotiations with the Company for an increase in pay?

A. No.

Q. Your negotiations were for the purpose of leading to a collective bargaining contract, is that it?

A. Yes sir.

178 Q. With the union?

A. Yes, sir.

Q. And this bonus applied to the individual contracts which the Company had with all of its employes?

A. Yes sir.

Mr. Evans: That is all.

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180 FRANCIS BUNZY,

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Evans) Will you state your name and where you live?

A. Francis Bunzy, Brighton, Illinois.

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182 Q. Do you know a man by the name of Robertson?
A. Bill Robertson, yes.
Q. Who is he?
A. Pipefitter foreman in the plant department.
Q. Did you work under him?
A. I did.
183 Q. Did you ever have any discussion with him concerning the independent union?
A. I made the remark that it didn't amount to anything, and he told me that—
I said, "We ought to have an outside union if we are going to do anything."
And he said, "Well, you would get farther with the company with an independent union."
Q. And when did that conversation take place?
A. Well, it was along at the time they were soliciting it.
Q. In what year?
A. In 1937.
Q. Where did the conversation take place?
A. Right by the tramway, just past the brass specialty building in the Western plant. We were going out to a job.

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201 Cross-Examination.

Q. (By Mr. McRoberts) Mr. Bunzy, you say at this meeting after you had been laid off for a week they told you if you did anything to this watchman, Lynn, you would do time for it? Is that it, or something like that?
A. It would be more than my job. If anything happened to Lynn I would be pulled up about it, and if I was found guilty I would be more than fired and I would be in jail probably.
Q. Did they say you would do time for it?
A. Well, they gave me that impression anyhow, and that is what they meant, but I don't know the exact words that was said.
Q. Have you ever done time before?
A. I have been in jail, yes.
Q. Where?
A. Jerseyville.

Q. What was the charge, Mr. Bunzy?
A. Larceny.
Q. Did you plead guilty?
A. Yes.
Q. Did you serve your time?
A. Yes.
Q. Ninety days?
A. Yes.
Q. When was that, Mr. Bunzy?
202 A. That was 1933 or 1934, or something like that.
Q. Pardon?
A. 1933 or 1934, I imagine.
Q. (By Trial Examiner Ruckel) Before you came to work for the Company?
A. Yes.

* * * * * * *

205 Q. You testified to some statement made by Mr. Robertson. Just what was that again, please?
A. We were talking about the union and I said we
206 should have an outside union to get any results out of it, and Mr. Robertson said we would go farther with the Company with the independent union.
Q. Who else was there?
A. A fellow named Roydelp.
Q. How do you spell that, do you know?
A. R-o-y-d-e-l-p.
Q. Is he a foreman or employe?
A. He was a pipefitter at the time and I was his helper.
Q. Anyone else there?
A. No.

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223 Q. Mr. Bunzy, you asked for permission to go in to solicit membership in the A F of L? That is correct, isn't it?
A. Yes sir.
Q. Had you ever done that without permission?
A. I think so, yes.
Q. As a matter of fact, you had been very active over quite a period of time soliciting memberships in the A F of L union and contacting members about union business, on Company time and on company property, hadn't you?

A. I don't know as I was very active. I gave cards out and received cards from fellows that are now members of our organization.

224 Q. That was around the plant?

A. Yes, in the plant and out of the plant.

Q. Wherever you might meet a likely prospect you tried to sign him up?

A. I gave him a card and tried to sign him up, yes.

Q. How many did you sign up that way?

A. I don't know.

Q. Altogether how many did you sign up?

A. I wouldn't say I signed them up. I would give cards and they would come back and give them to me signed.

Q. About how many cards were brought back to you signed in that way, altogether?

A. I couldn't begin to say. I know we have about ninety per cent of them over there now.

Q. You have about 500 members now, haven't you?

A. Yes sir.

Q. How many of that five hundred did you sign up?

A. There was an awful crowd at our first meeting that signed up down there. There must have been two hundred at that meeting.

Mr. McRoberts: I think that is all.

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227 LOWELL JONES,

228 a witness, called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Evans) State your name, please, and where you live?

A. Lowell Jones; 556 Second Street, Wood River.

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256 Q. (By Mr. McRoberts) While you were a representative of the Independent Union, you were independent, weren't you, Mr. Jones?

A. Well, I tried to be, yes, sir.

Q. And you tried to represent the employees as best you knew how?

A. Yes, sir.

Q. And you were not acting as a company stooge in any way, were you?

A. Well, I don't believe I was ever accused of that; no.

Mr. McRoberts: I am not accusing you of that. That is all.

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371 JADY B. CHAPMAN

thereupon resumed the witness stand and testified further as follows:

Direct Examination (Continued).

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392 Q. (By Mr. Evans) I hand you Board's Exhibit number 15, for identification, and ask you to state what that is?

A. This is a working agreement for the cast shop.

Q. That is a copy of the agreement?

A. Yes, sir.

Q. It is dated March 18, 1941?

A. Yes, sir.

Q. Is that the agreement you referred to previously in your testimony?

A. With the casting shop?

Q. Yes.

A. Yes.

Mr. Evans: I wish to offer Board's Exhibit number 15, Mr. Examiner.

Q. (By Mr. McRoberts) Mr. Chapman, I note this document is not signed. Was the original of this signed by anybody?

393 A. Yes sir.

Q. Do you know where the original is?

A. I think it is in a glass case down in the casting shop department.

Q. The original was signed and posted some place on the bulletin board in the casting shop?

A. Yes sir.

Q. For the information of the employes?

A. Yes.

Q. Who signed it on behalf of the Company, do you remember?

A. Mr. P. W. Day.

Q. And this followed negotiations with who? Who negotiated with Mr. Day about this?

A. A committee from the casting shop of the advisory committeemen.

Q. This was an advisory committee of your independent union?

A. Yes sir.

Q. They negotiated with Mr. Day, and as a result of those negotiations this document was signed and posted in the casting shop?

A. Yes sir.

Mr. McRoberts: I do not see the materiality of it to the issues in this case, Mr. Examiner, and I object to it for that reason.

Trial Examiner Ruckel: It shows the contracts that
394 are in force between the independent and the Company. It will be admitted.

(Said document, marked for identification, "Board's Exhibit No. 15" was thereupon received in evidence.)

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396 Q. Mr. Chapman, were you a member of the independent union from the beginning?

A. No sir.

Q. When did you join, approximately?

A. In May 1940, I think it was.

Q. How long have you been working for the Com-
397 pany, approximately?

A. Eighteen years, approximately.

Q. And you did not join the union until May 1940?

A. That is right.

Q. Did anyone force you to go into the independent union?

Mr. Evans: Objection; calling for a conclusion.

Trial Examiner Ruckel: He may answer.

A. No sir.

Q. Did you go in of your own free will and accord?
Mr. Evans: I object, for the same reason.
Trial Examiner Ruckel: He may answer.
A. Yes sir.
Q. Why did you join the independent union?
Mr. Evans: Objection; immaterial.
Trial Examiner Ruckel: He may answer.
A. At first I didn't think is was so good; afterwards I thought it was all right.
Q. You joined because you thought a was a good thing to do?
A. Yes sir.
Q. That it might improve your position and the position of other employes in the Company?
Mr. Evans: Objection; same reason.
Trial Examiner Ruckel: He may answer.
A. I felt like the independent union principle was good.
Q. Just what do you mean by that? You liked the
398 independent union better than an affiliated union?
Mr. Evans: Objection; on the same ground.
Trial Examiner Ruckel: He may answer.
A. Yes.
Q. You felt you would rather join an independent union than a union affiliated with the American Federation of Labor or the C I O?
A. I did.
Q. That was the reason you joined the union?
A. Yes sir.
Q. After joining the union you became active in it and became its president?
A. Yes sir.
Q. And you joined in May 1940, you say?
A. I think it was.
Q. When did you first hold office in the union or become a representative in the union?
A. August 1940.
Q. And from that time did you participate in negotiations with representatives of the company, collective bargaining negotiations?
A. From that time?
Q. Yes.
A. Yes.

Q. And from that time down to date you have
399 participated in a great many such negotiations, have you not?

A. I have.

Q. And other representatives of the union with you?

A. Yes.

Q. You have bargained for wages?

A. Yes.

Q. Hours?

A. Yes.

Q. Working conditions?

A. Yes.

Q. Bonus arrangements?

A. Yes sir.

Q. Group insurance—or was that before your time?

A. That was before my time.

Q. Vacations?

A. Yes sir.

Q. The time when work should start and stop? The hours when shifts would change? Was that before your time?

A. That was before my time.

Q. Did you bargain on classifications of employes in different departments and rate changes of those classifications?

A. Yes sir.

Q. Hospitalization?

A. No sir.

400 Q. That was before your time?

A. Yes.

Q. Have you negotiated about incidental matters such as drinking fountains, fans, and showers in different departments?

A. Yes sir.

Q. You demanded a working agreement?

A. Yes sir.

Q. When did you start asking for a working agreement? As far as you know when did the union start asking for a working agreement? I don't mean the exact date.

A. In February 1941.

Q. In February 1941?

A. Yes sir.

Q. And you continued to work for and negotiate about that working agreement until finally in June 1941 you got it?

A. Yes sir.

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402 Q. Let me ask you specifically, when you asked for wage increases, Mr. Chapman, how much of an increase did you ask for?

A. We asked for ten cents an hour in October.

Q. (By Trial Examiner Ruckel) 1940?

A. 1941.

403 Q. (By Mr. McRoberts) 1941?

A. Yes.

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405 Q. Mr. Chapman, there has been some testimony about an agreement made in the cast shop back in March of 1930. Was there any other union claiming the right to represent employees in the cast shop at that time?

A. Not that I know of.

Q. Or in the brass mill?

A. No, sir.

Q. Or was any other union claiming the right to represent employees in those departments in April of 1941?

A. No, sir.

Q. Let me go back, Mr. Chapman. You said you asked for a 10 per cent increase in wages?

A. 10 cents.

Q. 10 cents an hour increase in wages; a blanket increase?

A. Yes, sir.

Q. Did you get it?

A. No, sir.

Q. Did you demand it; are you for it?

Mr. Evans: I object; calling for a conclusion.

Trial Examiner Ruckel: Tell us what you did to try to get it.

The Witness: We had a meeting. The executive board of the Independent Union had a meeting at their office on 106 West Main Street, East Alton, and they drafted a letter stating that they were demanding 10 cents an 406 hour, and if they didn't get it, that they would strike on October 19.

Q. (By Mr. McRoberts) Did you present that letter to the company's representative?

A. We did.

Q. And discussed it with them?

A. We did.

Q. Did you have more than one meeting with them on account of that demand?

A. Yes, sir.

Q. And what was the result of those negotiations?

A. We had a number of meetings; I don't know how many, but about five or six, and at the last meeting they had a counterproposal that looked rather good to us, better than to strike, and we accepted it.

Q. That counterproposal amounted to an increase of about how much an hour?

A. That counterproposal?

Q. I am talking about the final thing that you accepted; not any of the intermediate discussions, Mr. Chapman. There is no use going into those details.

A. It amounted to about, I would say, an average of 7 cents.

Q. And having accepted that counterproposal, the strike was called off?

A. Yes, sir.

407 Q. Had the strike been voted, or did you committee, your executive committee, have authority to call a strike, or were you going to submit it to the membership for vote?

A. We were going to ask for a strike of the membership, whether we got it or not.

Q. There had been no strike vote of the membership?

A. No, sir.

Q. And your demand was that unless you got this, you would ask for such a strike vote, and if the members voted, would strike?

A. That is right.

Q. Had you discussed this demand with the various members of the Independent Union?

A. We did discuss it with other members; I wouldn't say all of them.

* * * * * * *

408 Q. (By Mr. McRoberts) Mr. Chapman, did the Independent Union—I am talking only of the time during which you were carrying on negotiations—did you ask for any other things from the company besides this 10 cents an hour increase?

A. Yes, sir.

Mr. Evans: I think that has already been covered in the testimony. Counsel went over a long list—

Mr. McRoberts: Now, I want to show what he asked for and what he got, and whether he got everything he asked for.

Trial Examiner Ruckel: He may answer.

A. Yes, sir; we asked for a number of things.

Q. (By Mr. McRoberts) Did you get them all?

A. No, sir.

Q. What were some of the things that you asked for and didn't get?

A. We asked for a closed shop. We asked for showers. We asked for—

Q. Did you get some of the showers?

A. We got some; yes, sir.

Q. What about vacations? Did you ask for vacations?

A. Yes, sir.

409 Q. Did you get your full demand on vacations?

A. No, sir. We asked for two weeks vacation for everyone over three years.

Q. And what did you get?

A. We got a graduated scale.

Q. Beginning at one week and running up to a maximum of two, over a period of years, is that right?

A. Yes, sir.

Q. In your final deal, it took, I think, twenty years to get two weeks vacation, or was it twenty-five?

A. Twenty-five, I think it was.

Q. That was the deal you got?

A. That was the deal we got.

Q. To refresh your recollection, Mr. Chapman, your demands for a wage increase were made before October, 1941, was it not?

A. It probably was, but October 19 was the dead line.

Q. That was the time you thought it came to a head?

A. Yes, sir.

Q. You had been demanding it for some time before that, is that right?

A. We had.

Q. Did you make a demand in the spring of 1941 for a wage increase?

A. Yes, sir.

410 Q. And you got an increase, I think, in July; effective in July?

A. Yes, sir.

Q. Do you recall now what your demand was and how much you got?

A. I don't recall, but I am of the opinion we asked for more than we got.

Mr. Evans: I move to strike that out.

Trial Examiner Ruckel: It may stand.

Q. (By Mr. McRoberts) That is your best recollection, is it?

A. Yes, sir.

Q. Was one of the things you demanded from the company a bulletin board or the use of the company's bulletin board?

A. Yes, sir.

Q. And what was the first answer to your demand?

A. "No".

Q. Did you repeat that demand on occasions?

A. Yes, sir.

Q. And was it finally granted?

A. It was.

Q. Do you remember when it was granted?

A. I don't remember when it was granted.

Q. Well, was that only just this fall that it was granted; the fall of 1941?

411 A. We were granted the privilege of using the bulletin board that they had made in August or September, I think.

Q. Do you know when that was with reference to the time the American Federation of Labor Union was given the right to use the bulletin board?

A. Yes, sir. It was at practically the same time.

Q. And up until that time you had been turned down on your demand?

A. Absolutely.

* * * * * * *

412 Q. (By Mr. McRoberts) Mr. Chapman, let me see if I can clarify that. Did the company, the Western Cartridge Company, at any time ever contribute any money to the Independent Union?

A. No, sir.

Q. Did they ever pay over any money to the Independent Union, except money that was due on these wage assignments?

A. No, sir.

Q. Did they ever pay any of the union's bills, that you know of?

A. Not that I know of; no, sir.

Q. Did they ever pay any salaries of any of the Independent Union officers or representatives?

A. No, sir.

Q. Except for work done in the plant, of course. Your answer to that is "No"?

A. Yes, sir.

Q. By "Yes" you mean they did or did not?

A. I mean they did not pay, except the work that was did in the plant.

Q. This bulletin board that was referred to, whose bulletin board was that, that you were permitted to use?

A. It was a bulletin board that was made with our name on it, that we were permitted to use.

Q. Did you pay for that or did the company pay for
413 that?

A. The company paid for that.

Q. The company paid for that?

A. Yes, sir.

Q. Do you know whether the company did the same thing for the American Federation of Labor Union?

A. I don't know.

Q. You don't know about that. Now, do you know of any other way in which the company, the Western Cartridge Company, paid any of the bills for or contributed any cash or property to the Independent Union?

A. I don't know of any.

Q. Mr. Chapman, after you had been told by the company that they would grant your request for a bulletin board, it was some time before they finally let you have it?

A. Yes, sir.

Q. And it was a question on the part of the union as to how soon that bulletin board would be ready?

A. Yes, sir.

Q. Now, up until that time had any notices that the union had posted around the plant, Independent Union notices posted around the plant,—had they been taken down?

A. Yes, sir.

Q. Mr. Chapman, I believe you testified on direct examination that some notices were given to the members of the union committee to be posted around the plant, or
414 wherever they could, calling for a vote to ratify this working agreement of June 4, 1941?

A. Yes, sir.

Q. Do you know whether any of those notices were ever put up in the plant, and what happened to them?

A. Why, we have to—the way we do that, we have to supply a number of bulletins, because they will hang them up, and maybe they won't stay there very long. A watchman or somebody will see them and yank them down, and up to the time they gave us the bulletin board, we didn't have no place where they would stay any length of time.

Mr. Evans: I move to strike out the conclusion as to the watchman or somebody pulling them down.

Mr. McRoberts: I am going to clarify that, Mr. Examiner.

Trial Examiner Ruckel: It may stand.

Q. (By Mr. McRoberts) Was it the practice, Mr. Chapman, up until you were given this bulletin board of your own, for the watchman or the foreman or the supervisors of the company to tear down any notices that the Independent Union put up in the plant?

Mr. Evans: I object; too general and calling for a conclusion.

Trial Examiner Ruckel: He may answer.

A. They quite frequently did; yes, sir.

415 Q. (By Mr. McRoberts) Do you know of any instances when notices which the Independent Union put up around the plant were permitted to stay any length of time?

Mr. Evans: Calling for a conclusion; I object.

Trial Examiner Ruckel: He may answer.

A. The question?

Trial Examiner Ruckel: Read the question.

(Question read.)

Q. (By Mr. McRoberts) Or were they taken down immediately?

A. Some of them would.

Q. Pardon?

A. Some notices would stay up a long time.

Q. Where would they be, do you know?

A. Sometimes they were pretty well hidden; they were back, away.

Q. In other words, you had some sort of secret places of your own where you could post the notices, and they would not be very conspicuous; is that it?

Mr. Evans: Oh, I object to that.

Trial Examiner Ruckel: Objection sustained.

Q. (By Mr. McRoberts) You say they were pretty well hidden?

A. At times; yes, sir.

Q. And those notices would sometimes stay up for awhile?

A. Yes, sir.

* * * * * * *

418 Q. Where were your union meetings held?

A. Union meetings were held down at our office at 106 West Main Street, East Alton.

Q. Were they ever held on company property?

A. Not a union meeting; no, sir.

Q. That is what I mean. Were any foremen members of the Independent Union?

A. Foremen?

Q. Yes.

A. Why, they could be, but our constitution says
419 they shant be.

Q. They are not supposed to be?

A. No, sir.

Q. Do you know of any foremen that are members of the Independent Union?

A. No.

Q. As far as you know, there are none?

A. They cancelled.

Trial Examiner Ruckel: They what?

The Witness: They cancelled their memberships when they become foremen.

Q. (By Mr. McRoberts) What you are referring to is the fact that a man may be a member of the union, working in the plant, and may be promoted; is that right?

A. That is correct.

Q. When he is promoted to the position of company foreman, he has to cancel out his membership in the union?

A. Yes, sir.

Q. You don't take in initially any foremen as members?

A. No, sir.

Q. While they are foremen, do you?

A. No, sir.

Trial Examiner Ruckel: What do you mean, some may be members?

The Witness: Some of them might not have cancelled their dues.

420 Q. (By Mr. McRoberts) As soon as you know that a foreman has been promoted to foreman, do you watch those things and cancel him out as soon as you can?

A. We don't have the privilege of cancelling anyone. Every man that signs, he has to make or to sign a statement asking for cancellation.

* * * * * * *

421 Q. Now, the company does pay over to the Independent Union money collected from members on wage assignments, I believe you testified?

A. Yes, sir.

Q. Do you know of any way in which the company gives assistance in the collection of dues from employees who don't agree to the dues checkoff, or of the wage assignment?

A. That doesn't agree to the wage assignment?

Q. Yes.

A. I know of no way; no, sir.

Q. You have never heard of anything of that sort being done, have you?

A. No, sir.

Q. Mr. Chapman, last spring the Independent Union was represented by an attorney, Mr. Emanuel Weisman?

A. Yes, sir.

Q. Do you know how long he had represented the union, approximately?

A. No; I don't.

Q. He had been representing them for a year or two, hadn't he?

A. Yes, sir.

Q. And he represented the union in April of 1941?

A. Yes, sir.

Q. Do you know whether Mr. Weisman is also attor-
422 ney for various American Federation of Labor Unions?

A. Just hearsay.

Q. Did the Independent Union turn over its books and records for inspection by Miss de Schweinitz, the Regional Director of the National Labor Board, this last summer or spring?

Mr. Evans: Objected to.

Trial Examiner Ruckel: He may answer.

A. Yes; they did.

Q. (By Mr. McRoberts) Upon request you permitted her to examine and her representatives all of the union records?

A. Yes, sir.

Mr. Evans: Objected to as immaterial.

Trial Examiner Ruckel: He may answer.

Q. (By Mr. McRoberts) Books of account?

A. Yes; all of our books.

Q. Anything she wanted to see?

A. Anything she wanted to see.

Q. Did you permit her to take away from the union hall and keep for some time the minute book of the union?

Mr. Evans: Objection; immaterial.

Trial Examiner Ruckel: He may answer.

A. We did.

Q. (By Mr. McRoberts) Did you hold back from her any records of any kind,—from Miss de Schweinitz?

423 Mr. Evans: We will stipulate that nothing was held back so far as records were concerned. I don't see that there is any point.

Mr. McRoberts: I understand that counsel for the Board will stipulate that nothing of any kind was held back by the Independent Union which was requested by Miss de

Schweinitz or any representative of the National Labor Relations Board?

Mr. Evans: Are you talking about records?

Mr. McRoberts: Records or other information.

Mr. Evans: No; I am talking merely about records.

Mr. McRoberts: The stipulation covers merely records then.

Mr. Evans: That is right.

Trial Examiner Ruckel: Yes.

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426 Q. Now, did Mr. Weisman, your attorney, participate in these conferences with the company representatives?

A. No, sir.

Q. Was there any discussion about that between you and the company representatives?

A. Not since I was on the board.

Q. So that Mr. Weisman, your attorney, did not participate in any of the negotiations for the June, 1941, contract?

A. No, sir.

Q. Or the casting department or roll shop contract?

427 A. He was just in the background advising us what would be good.

Q. Now, at the time that you got the agreement in the cast shop and the roll shop, isn't it true that the A. F. of L. was organizing and had secured a number of members in those departments?

A. They might have.

Q. You could see the A. F. of L. buttons that the men were wearing, could you not?

A. No, sir.

Q. Didn't some of them wear their buttons in April, 1941, and thereafter?

A. Not that I saw.

Q. You say that you have never seen an A. F. of L. button in the plant?

A. I have seen A. F. of L. buttons in the plant.

Q. Beginning when?

A. Well, I couldn't say. I saw them from the powder mill; the boys from the powder mill coming over there. They have them.

Q. I mean the men that work in the brass mill, cast shop and roll shop.

A. I don't remember seeing any in the casting shop.

* * * * * * *

431 Q. (By Mr. McRoberts) Mr. Chapman, you said that Mr. Weisman was in the background advising you last spring and summer with respect to this working agreement contract but did not take part in the negotiations himself; is that correct?

A. That is right.

Q. Did you submit drafts of that contract to him before it was signed?

A. Yes, sir.

Q. He suggested changes in it?

A. He did.

Q. And various changes were made?

A. Yes, sir.

Q. He didn't participate in the negotiations himself?

A. No, sir.

432 Mr. McRoberts: That is all.

* * * * * * *

433 Q. (By Mr. McRoberts) Mr. Chapman, it is true that the company and the union representatives negotiated from time to time with respect to adjustments in the brackets, didn't they?

A. Yes, sir.

Q. Now, by "brackets" that is the rates of pay for a particular job? Each job carried its own brackets?

A. Yes, sir.

Q. Minimum and maximum and in between rates?

A. Yes, sir.

Q. And those bracket adjustments were a matter of constant negotiation between the company and the union, were they not?

A. Yes, sir.

Q. And numerous adjustments in brackets were made from time to time over the years in addition to these blanket wage increases; is that correct?

A. That is right.

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449 Mr. McRoberts: Mr. Examiner, Mr. Evans asked for some figures as to the employment in 1941; the number of employees.

I have this information here, if he wishes me to read it into the record, or shall I give it to you by witnesses later, or what is your wish there, Mr. Evans?

Mr. Evans: No. Let us talk it over just a second.

Mr. McRoberts: All right.

The information requested by Mr. Evans as to number of employees is as follows:

On June 2, 1941, the company records show a total of 6,343 hourly paid employees. That includes the smokeless powder division.

It also includes a comparatively small number of hourly paid employees who were clerical employees and who were part of the protection force or watchman force. The number of hourly paid maintenance and production employees would be something less than 6,343, but probably in excess of 6,000.

The corresponding figure for June 4, 1941, was 6,373 total hourly paid employees.

These figures, of course, relate only to the East
450 Alton plant of the company.

Trial Examiner Ruckel: Is that stipulation accepted?

Mr. Evans: I will accept those figures as correct.

JAMES OGLESBY,

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Evans) Will you state your name and where you live, please?

A. South Roxana, Route 1, East Alton. James Oglesby.

* * * * * * *

460 Q. And then in January and February you got your union formed and got your charter, I believe?

A. That is right.

Q. And from that time on you were soliciting membership in the Chemical Workers Local Union No. 22574?

A. Yes, sir.

Q. That is correct, isn't it?

A. Yes, sir.

Q. Did you get a lot of men signed up?

A. About 170.

461 Q. Where did you solicit these men, Mr. Oglesby?

A. Well, we solicited them on the outside. We solicited them on the inside; wherever we happened to run in contact, as we worked. We didn't stop our work to solicit them. If a man was working alongside of you, we talked, and so forth, during noon hour and after work. They signed up their cards on the outside of the gate.

Q. You solicited them whenever you got a chance to?

A. That is right; just like you hold any conversation with anybody at your work.

Q. Some of the solicitation then took place during working hours and on company property and some of it on the outside after working hours; is that right?

A. We talked about it during working hours, that is right. We never signed up anybody during working hours.

Q. Where would you do your actual signing up?

A. Outside of the gate.

Q. But you would give your selling talk, so to speak—

A. Just like holding any other conversation, talking about hunting or anything else, as they come along, and work as you talk.

Q. But you would try to persuade the men to join the union during working hours?

A. Oh, absolutely.

Q. And on company property?

462 A. That is right; yes.

Q. Was that true generally of the other men who were interested in forming the Chemical Workers Union?

A. I can just speak about myself.

Q. Well, did any other men join in these conversations, trying to persuade other employees to join?

A. Well, we generally have two or three around us at a time, you see; our whole gang. If I was on the outside, working, why I would probably have a couple of helpers or fellows learning—apprentices, trying to learn the trade,

using a hammer and saw, and you would talk to them as you go along. We never have the same man over a day or two.

Q. Would there be times in these conversations when there would be other union men besides yourself who would be helping to solicit members?

A. Oh, there was other men in the plant, sure, if that is what you mean; other men in the plant soliciting at the same time I was.

Q. Yes; at the same time you were?

A. Yes.

Q. Pretty generally, everybody who was active—

A. That is right.

Q. —was doing soliciting whenever you could find a likely prospect?

A. That is right.

463 Q. And everybody was soliciting during working hours and outside of working hours?

A. That is right.

Q. And at noontime?

A. Yes.

Q. And at night?

A. That is right.

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657 ELDEN WEISHAUPT,

a witness, called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Evans) State your name, please.

658 A. Elden Weishaupt.

Q. You work for the Western Cartridge Company?

A. For the East Alton Manufacturing Company.

* * * * * * *

659 Q. Where did the conversation with Mr. Shindle take place?

A. I was working, I believe, 4 to 12 one night, and I had a boil on my neck, and I was going to the first-aid, and

the first-aid is over on the other side, and I asked him for a pass to the gate so I could go to the other side, and he said "Come down to the yard office and I will get you a pass" and he said "I have a little pick-up truck out there, and I will take you down there with me", so he did, and after he issued the pass at the yard office he said "I will take you down to the gate and save you a walk" and he started out, and he asked me, he said "Are you still an ambitious youngster?" and I said "I would like to get ahead down here if there is any possible chance", and he said, "There are several chances to get ahead," and I said

"Well, I guess the best way to get ahead down here
660 is to work and show you are capable of doing your work and you might get somewhere," and he said "There are several ways to do that, if you know the right way, and they have talked union down here" and he said "This election is going to come up," and he says "I can't tell you which way to vote, it just like Democrat or Republican; I can tell you I would like for you to vote Republican, but you still can tell me and vote Democratic", and I said "I don't know, everybody has been very nice around here and I like everybody I work with, and I really haven't had no kick", and we talked about that, and he said "Well, you know you can really get ahead around here if you know the right way", and he said "You know this union is coming in here and they have caused quite a bit of trouble in different places", and he said "I read in the paper here a while back where there was some knitting mill", and I forget whether it was Chester, but it was in Southern Illinois, where they had moved the knitting mill away from there to another part of the country to avoid the union and he said "You know something like this could happen here, and I don't know that it will, and they could shut down this place if the union gets in here, but I don't think it will" and I said "I belong to the union, and like I told you a while ago, everybody is so nice down here to me, and I belong to it now, and I think will be a damned fool and I will stick with it, and if the rest of them
661 are damned fools I will be one of them, but I don't think I will be" and that is all that was said, and he asked me if I was sore he talked to me and I said "No, I

am not sore, it don't make any difference to me, I can tell you what I think and you can tell me what you think", and that is all that was said.

Mr. Evans: That is all.

Cross-Examination.

Q. (By Mr. McRoberts) Did he ask you to vote in the election?

A. No, he did not.

Q. And he told you he could not tell you which way to vote in the election?

A. That is right.

Mr. McRoberts: That is all.

Mr. Evans: That is all.

(Witness excused.)

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666 Q. (By Mr. McRoberts) Did you try to get a closed shop, Mr. Greer?

A. I have done a lot of arguing for it.

Q. And the Company turned you down?

A. That is right.

* * * * * * *

Q. You have joined the C I O, I believe?

A. That is right.

667 Q. And resigned from the independent union?

A. That is right.

Q. When did that take place, Mr. Greer?

A. That was about the first part of November.

Q. Around the first part of November?

A. I would say around the 15th of November.

Q. Around the 15th of November?

A. Yes sir.

Q. Since then have you attempted to get employes to join the C I O?

A. Yes, sir.

Q. Both inside the plant and outside?

A. No sir.

Q. Pardon?

A. Yes sir and no sir.

Q. I didn't catch that?

A. I say yes sir and no sir. I have got them outside of

the plant but I have never signed up a member inside of the plant.

Q. Have you invited them on the inside of the plant?

A. Yes sir.

Q. But the actual signing up has taken place on the outside?

A. I have never signed a man up myself; I have given them cards and the cards have gone out and come back to me signed up.

Q. But you have given them out in the plant and
668 they would come back to you, but you did not do the actual signing?

A. That is right.

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712 S. R. IRISH,

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

* * * * * * *

730 Q. Did you have occasion or did you at my request make some computations as to the total number of transfers which had been made this year, 1941, both by weeks and the total?

A. Yes.

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731 A. It includes the period from the week ending January 4th to the week ending November 29, 1941, a total of 47 weeks, and in that period there were 1074 transfers.

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732 Q. (By Mr. McRoberts) Did you make a similar computation with respect to the number of terminations of employment?

A. Yes, sir.

Q. During the same period?

A. For the same period.

Q. What is the total number?

A. 1424 terminations in forty-seven weeks.

Q. Do you have that broken down between voluntary quits and discharges?

A. No, I do not.

Q. That includes all voluntary terminations as well as discharges?

A. That is right.

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1041 Q. (By Mr. McRoberts) Mr. Irish, would a notice to a man to come in and sign a new contract go to an employe automatically on the expiration of his old contract?

1042 A. Yes. There is a followup system maintained in the contract office, and the attempt is to have the employe come in and sign an extension approximately two weeks before, so there will be no lapse in that.

Q. Does the contract office check up in any way with the man's foreman or his supervisors to see what kind of work he is doing, or anything about his work, before asking him to come in and sign a new contract?

A. They do with new contracts, but not on extensions.

Q. That is they do when a man has been employed three months?

A. Yes sir.

Q. Then they give him a contract?

A. Before they give him the first original contract, but not the extension.

Q. On an extension, that goes out automatically from the contract office?

A. Yes, sir.

Q. Without a checkup of his work with his foreman or supervisors?

A. These contract terminations come to the contract office, or a list of them come once a week, and their records are corrected from that list.

Q. In other words, is it possible for a man to receive a notice from the contract office to come in and sign
1043 up a contract on the same day his supervisor discharges him?

A. It is possible to have that, or even to have had him discharged two or three days before and still have a request.

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1046 P. W. DAY,

a witness, called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. McRoberts) Will you state your name, please?

A. P. W. Day.

Q. Where do you live, Mr. Day?

A. Alton.

Q. Where are you employed?

A. Western Cartridge Company.

Q. What is your position with that Company?

A. I am superintendent of the brass division.

Q. How long have you been with the Company?

A. About twenty-four years.

Q. How long have you been superintendent of the brass division?

A. Since February 1st.

Q. 1941?

A. 1941, yes.

Q. Before that time what position did you hold?

A. Assistant superintendent.

Q. Of the brass division?

A. Of the brass division.

Q. How long did you have that position, approximately?

A. Approximately fifteen years, I think.

* * * * * * *

1060 Q. Will you compare the number of pounds per hour overall average for the months of May, June and July with the number of pounds overall average shown in November—and I am considering not only Williams' but Elliott's case in this connection.

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1063 Q. Mr. Day, referring to William Elliott, you took charge of the operation of the casting shop on February 1, 1941, is that correct?

A. Yes. Up to that time my duties had been confined principally to the rolling mill.

Q. When you took charge of the casting shop what was the situation there?

A. There was considerable grumbling among employees about how they had been treated; some didn't think they had a fair opportunity; some didn't think they had
1064 been promoted or got jobs according to their seniority; and some of them didn't think they had the proper rate.

Q. What did you do about that?

A. The first thing I did after I got charge of the job was to send for Bill Elliott.

Q. When was that? Do you remember the date?

A. The early part of February. I think about the 8th.

Q. What did you say to Elliott and what did he say to you?

A. I had quite a long discussion with Elliott.

Q. First, let me ask you why you picked Elliott?

A. I called Elliott because he had the reputation of being a severe critic of the management, the company and everybody in general.

Q. What was said at this conference?

A. I called Elliott for the purpose that I might get all of his criticisms first and make an investigation in order to determine what might be wrong. I called Elliott for the reason he was a type of fellow that apparently was not afraid to speak his mind, and I thought we might arrive at some conclusion whereby there would be a little better feeling in the cast shop, a little better feeling between the management and employes.

Q. (By Trial Examiner Ruckel) What was the date of this, do you recall?

Mr. McRoberts: February 8th.

1065 Q. (By Mr. McRoberts) What took place at the conversation?

A. There was not any definite conclusion arrived at except—

Mr. Evans: I object to the witness' conclusion.

Trial Examiner Ruckel: Objection sustained, and tell us what you said.

Q. Tell what was said there at that time?

A. Mr. Elliott criticised the management because they had not promoted employes according to their seniority.

He particularly objected to the attitude of the superintendent of the cast shop toward the men.

Q. Who was that?

A. Mr. Hartshorn.

Q. Mr. Hartshorn?

A. He was superintendent at that time. He didn't think that the superintendent gave the men opportunity to do the best job. I think one thing he mentioned in particular he commented the foremen were all right if we could deal directly with the foreman, that the boys were all right.

Q. Was there anything else said at that meeting that you recall, Mr. Day?

A. He discussed some things that happened in the past in connection with a bonus plan we had. He did not like the bonus, nevertheless he said under the plan he had been cheated out of quite a lot of money by the
1066 Company, due to the fact it was taken off—it is pretty hard to remember all that was said, and it was a general discussion in regard to it.

Q. Let us go on. Following that meeting did you work out—

A. Subsequent to that meeting Chapman, chairman of the independent union, asked for a meeting with the cast shop people in regard to conditions in the shop. This applied to wages as well as certain other conditions.

Q. Did you have such a meeting?

A. I told Chapman at that time he might have any meeting he saw fit and I would be glad to discuss anything in regard to working conditions and wages that he might wish to bring up. Sometime, I do not remember the date, but not very much later than that, we had a meeting with Chapman, and I think there were four representatives; they had a representative from each shift. I met with them on one or two occasions.

Q. Was Mr. Elliott one of those representatives?

A. Yes, sir. Mr. Elliott was one of those representatives.

Q. (By Trial Examiner Ruckel) About when was that meeting?

A. It was, I would say, between the 8th of February and the 18th of March, I met with them twice for the

entire meeting and another meeting part of the
1067 time was a meeting in which Mr. McCauley was with me.

Q. Who was Mr. McCauley?

A. McCauley at that time was a man who was handling our personnel relations—you might say it was his job to work between the employment department and the mill and work with foremen in placing men in different shifts—if you had an excess number of men on one shift to place them on other shifts, to see everybody got a fair deal and see everybody got as near an even number of hours of work as possible, and in general looking after employes' interests. At that time—

Q. (By Mr. McRoberts) As a result of these meetings did you make some agreement?

A. As a result of these meetings we arrived at an agreement which was apparently satisfactory to all parties concerned. I believe the date of that agreement was the 18th of March.

Q. (By Mr. Evans) This is the cast shop agreement you are talking about?

A. The cast shop.

Q. (By Trial Examiner Ruckel) Who was the agreement between?

A. Between the management and the representatives of the independent union for the casting department.

Q. (By Mr. McRoberts) Mr. Day, I show you a paper which has been identified as Board's Exhibit Number 15, and has been identified in this proceeding as a copy
1068 of the agreement—and I will have this one marked, too, if you please.

(Said document was thereupon marked, for identification, "Respondent's Exhibit No. 11".)

Q. I will show you a paper which has been identified as Respondent's Exhibit number 11, and which from a hasty inspection appears to be a copy of that, except for the last line and typed place for signature. Now, can you state whether this exhibit is the agreement you referred to, and if so, can you account for that difference at the end?

A. I might account for it this is the first typewritten copy.

Q. By "this" you are referring to Board's Exhibit Number 15?

A. Yes sir.

Q. And Respondent's Exhibit number 11 has had a place for your signature and the last line added to it?

A. I think that change was made in order to definitely have and provide a place for my signature on the agreement.

Q. And having been signed, was the original posted in the cast shop?

A. As I remember, this one was posted. It was a copy of this, but it wasn't this. (Indicating.)

Q. By "this" you mean Respondent's exhibit number 11?

A. Yes sir.

Q. The original of that, bearing your signature, was posted in the cast shop?

1069 A. Yes sir.

Q. When that agreement of March 18th, 1941, was negotiated did Mr. Elliott object to it in any way at the time?

A. No sir.

Q. Afterwards what position did Mr. Elliott take?

A. He told some of the people up there we did not intend to abide by this agreement, it just did not mean anything.

Mr. Evans: I move to strike the answer as hearsay, Mr. Examiner.

Q. Is this a report that was made to you?

A. It was.

Q. Part of your basis for your final decision in the Elliott case?

A. Yes.

Mr. Evans: Objection, for the same reason.

Trial Examiner Ruckel: Read the last question.

(Question read by reporter.)

Q. (By Trial Examiner Ruckel) You mean part of the reason for you discharging Elliott?

A. Yes.

Trial Examiner Ruckel: Objection overruled.

Mr. Evans: I would like to withdraw the objection.

Q. (By Mr. McRoberts) Can you tell us anything more about that particular report that was made to you?

A. Subsequent to this agreement the representatives
1070 of the independent union were supposed to bring any grievances that they might have either to the foreman, and if not satisfactory to the foreman, bring them to me, and on Elliott's shift no grievances were brought up. Grievances on his shift were brought through representatives on the other shift.

Q. (By Trial Examiner Ruckel) Was this while Elliott was still with you?

A. This was while Elliott was a representative. This was immediately following this agreement.

Q. (By Mr. McRoberts) This agreement of March 18th?

A. Yes.

Q. While Mr. Elliott was a representative of the independent union?

A. Yes.

Q. Do I understand you to say that grievances on his shift were brought up through representatives on other shifts?

A. Yes.

Q. Did you find out why that happened?

A. He would not bring them up.

Mr. Evans: I object to that as a conclusion.

Q. (By Trial Examiner Ruckel) How do you know?

A. He didn't bring them up because they couldn't get any satisfaction through him, so they went to representatives on the other shift.

Mr. Evans: I move to strike that as purely a surmise
1071 of the witness.

Trial Examiner Ruckel: It may be stricken.

Q. (By Mr. McRoberts) Is that what reported to you, Mr. Day?

A. It was.

Trial Examiner Ruckel: That was not a contributing factor in the subsequent discharge, was it?

Q. Was it one of the factors, Mr. Day?

A. It certainly was; it tended to indicate his attitude towards the Company.

Trial Examiner Ruckel: Objection overruled.

Q. Was it reported to you what statements he had

made to the employes about grievances and the management's attitude toward them?

A. It was reported to me he said they did not intend to make any adjustments, that they did not intend to live by the agreement, and there wasn't any use taking any grievance to the office, you wouldn't get any satisfaction, in spite of the fact other representatives had been bringing grievances and they had been adjusted satisfactorily.

Mr. Evans: I move to strike that as a conclusion of the witness.

Trial Examiner Ruckel: Beginning with "in spite of the fact" the answer may be stricken.

Q. Mr. Day, did you receive any reports about Mr.
1072 Elliott's actions after he resigned as representative of the independent union?

A. I had a report that he was not going to be representative of the independent union any longer, and I think one of our employes, Grunner, made the remark that he got in a serious argument with him due to the fact that Grunner wanted to take it over.

Q. (By Trial Examiner Ruckel) Take what over?

A. As representative of the independent.

Q. (By Mr. McRoberts) In May I believe you received a petition for an increase in wages?

A. Yes.

Q. And Mr. Elliott joined in that, I believe?

A. He signed the petition. Something over a hundred employes signed the petition in the two departments. It came from two departments.

Q. In July a raise was granted?

A. Yes sir.

Q. Did Mr. Elliott receive in that increase exactly what he had asked for as far as the job was concerned?

A. Yes. Casters in that increase got exactly what they asked for in that petition.

Q. (By Trial Examiner Ruckel) When did the increase take place, before or after Elliott's discharge?

A. Before.

1073 Q. The request was made before, but when did it go into effect?

A. The 13th of July, I think. Yes, it was the 13th of July.

Q. (By Mr. McRoberts) Mr. Day, did you have any difficulty with the production of your cast shop in June?

A. The quality of metal was very poor.

Q. First, let me take the production per man.

A. The production in the cast shop was low.

Q. How did it compare with any previous record?

A. We had lowest production per man as far as any record would show.

Q. And the records go back for a number of years?

A. Yes, they go back for a number of years.

Q. Did you have difficulty with the quality of your products?

A. We were at that time having a very large percentage of metal rejected in the mill due to cast shop defects. These are defects that cannot be determined until the metal is rolled and on the finished inspection.

Q. When it is inspected can you tell whether it is a defect that arose in the cast shop or in rolling?

A. Yes; very easy.

Q. It is easy to determine?

A. It is easy to determine whether the defect is due
1074 to casting or whether it is due to rolling, or whether due to any other procedure in manufacture.

Q. These defects you refer to that you had difficulty in June were defects in the cast shop?

A. Yes sir, particularly porous blistered metal—what we termed slivers.

Q. Have you had a tabulation made from the Company's record, kept under your supervision, prepared for you?

A. I had this tabulation made by Mr. Moody, who is responsible for inspection in the rolling mill.

Q. Under your supervision?

A. He is under my supervision, and he is responsible for passing or rejecting metal in the mill.

Q. Beginning with zero in the month of January, what does that record show?

A. January shows no rejection. February three rejections. I might state this in number of bars.

Q. I think that would be more illuminating.

Mr. Evans: I object to this, on the same ground as previously: Certainly there are a large number of elements that would go to make up such factors and such conclusions,

and, therefore, conclusions are not relevant or pertinent to prove or disprove any issues.

Trial Examiner Ruckel: Is it your contention these were rejections of iron which Elliott himself had worked on?

The Witness: May I answer?

1075 Trial Examiner Ruckel: Yes, either one of you.

The Witness: My conclusion is that these cast shop defects were due to the failure to follow instructions and follow regular cast shop procedure in general.

Q. (By Trial Examiner Ruckel) How is it possible to attribute that to Elliott out of 32 puddlers?

A. It is possible to attribute that to him due to the attitude of the people towards the work and his influence on them. It is his developing a feeling of indifference and antagonism toward the management we don't care what kind of metal we produce.

Trial Examiner Ruckel: Is that counsel's contention?

Mr. McRoberts: That is exactly our contention, and I will show immediately upon his being let out, Williams being let out, and grievances were made and heard, the situation was improved, and I will also bring out from the witness there were no other changes in conditions, if you wish me to elaborate on that.

Trial Examiner Ruckel: We will have the full answer, so I can get the picture as a whole, and then I will entertain a motion to strike. You may go ahead.

A. May I make an explanation as to the significance of this report?

Q. (By Mr. McRoberts) If you will, please.

A. The rejections indicate in number of bars re-

1076 jected due to cast shop defects each month. That is, we have these reject slips which have been mentioned before in every department, and these rejects are from finished material, and each one states the reason why the material was rejected. Rejections due to cast shop defects are particularly serious in that the higher the rejects the more possibility of letting defective material get through, and cast shop defects are the most serious defects we can have in the manufacture of ammunition. Cast shop defects are porous metal, what we call slivers, which cause stripping of bullet jackets or bursted shells or many other things which are of a serious nature.

Q. Just go right ahead and explain anything further you have as to the significance of these figures?

A. This report shows the general quality as to metal from the cast shop and how it was gradually getting worse all the time.

Q. Will you give the figures on the number of bars rejected?

Mr. Evans: Mr. Examiner, this is not in any way tied up with the work of the people.

Mr. McRoberts: We expect to tie it up, and we cannot do it all at once.

Trial Examiner Ruckel: Let us have the whole picture, and I will entertain a motion to strike when it is completed.

1077 A. In January we had no bars rejected. In February 3. In March 18. In April 27. In May 28. In June 203. In July 127. I might state, July is only a three-weeks month and we had a week vacation in that month, and these rejections would be in proportion to our production as it goes through the mill. August 150. September 99. October 35. November 9. I might also explain, too, that the metal always does not move through in exact proportion to the day it was cast. Some of it might take six to eight weeks to move through, and some might take a week to two weeks before it gets to finished inspection; but this report is very significant in that it indicates the quality of the metal going through the shop.

Q. (By Trial Examiner Ruckel) What was it in August?

A. 150.

Q. What was it in July?

A. 127, but that is a three-weeks month.

Q. What was it in September?

A. 99.

Trial Examiner Ruckel: You may continue.

A. October was 39 and November 9.

Q. (By Mr. McRoberts) Mr. Day, is the quality of the metal on the occasions of those rejects affected by weather conditions?

A. Not at all.

1078 Q. Is there any change in the mechanical setup out there to account for this variation?

A. Nothing at all.

Q. From your knowledge of the cast shop and its operations, do you know of anything to account for this increase and subsequent increase other than the operations of the men themselves?

A. It is purely a question of the men following instructions, carrying out the casting procedure in the proper manner.

Q. This report itself you have before you was not prepared until just recently?

A. That is right.

Q. Did you have before you in July information as to the increase in the amount of rejected metal?

A. We have that every month.

Q. Was that one of the things you had in mind in your dealing with Elliott and Williams?

A. Yes.

Mr. Evans: I am going to object to counsel leading the witness and move to strike the answer. It is just an improper way of questioning on important issues.

Trial Examiner Ruckel: Do not lead the witness. The answer may stand.

1079 Q. Mr. Day, I believe you have already testified in June your production per man fell below any previous record?

A. Yes.

Q. What did you do about it? Did you have any discussion about it?

A. I had discussion with foremen to make some effort to determine why it was.

Q. What did your foremen report to you?

A. Reported general indifference of the men, instead of trying to do what they should they tried to do as little as possible; some of them particularly were that way.

Q. Did you get any report as to who was promoting that feeling?

A. Williams particularly, and Elliott also. Williams was the man who was definitely laying down on the job at all times.

Mr. Evans: I move to strike his conclusion.

Trial Examiner Ruckel: It may be stricken.

Q. Was that report ever made to you?

A. Yes.

Trial Examiner Ruckel: You are bringing out who was promoting this feeling that brought about this difference in production, and that is different, I think, from counsel's question.

Mr. McRoberts: I am directing the question to any man, if there was any such, who was promoting this in-
1080 difference toward their work and disregarding orders and instructions.

Q. What did you do as to that?

Mr. Evans: I object to the general, leading question.

Trial Examiner Ruckel: The question has already been asked, and in fact the question has already been answered. The answer was you got a report that Burdette Williams and Elliott were stirring up the dissatisfaction. Is that a fair way of putting it?

A. Yes, sir.

Q. (By Trial Examiner Ruckel) Did you mean Burdette Williams in particular, the falling off in his work?

A. I might say that Williams and Elliott particularly were promoting that feeling in the cast shop and Williams was definitely laying down on the job himself.

Q. You do not mean Williams was promoting the feeling more than Elliott, but Williams was laying down on the job more than Elliott?

A. They were about a par in that concern as far as promoting feeling in the cast shop.

Q. (By Mr. McRoberts) How about production as individuals? How about Williams?

A. Williams was a man who was definitely laying down on the job.

Q. Elliott, so far as his own personal production was concerned, was it all right?

1081 A. He was doing all right.

Trial Examiner Ruckel: Off the record.

(Discussion, off the record)

Trial Examiner Ruckel: Recess until 1:45.

(Thereupon a recess was had until 1:45 o'clock P. M. on December 23, 1941.)

1082 After Recess.

Thereupon at 1:45 o'clock on December 23, 1941, the hearing of the above entitled matter was resumed, pursuant to recess.

Trial Examiner Ruckel: The hearing will be in order, please. Mr. Day, will you resume the stand?

P. W. DAY,

a witness, called by and on behalf of the Respondent, having been previously sworn, was further examined and testified as follows:

Direct Examination.

Trial Examiner Ruckel: Read the last two questions and answers, please.

(Record read by reporter.)

Mr. McRoberts: Off the record, Mr. Examiner?

Trial Examiner Ruckel: Off the record.

(Discussion, off the record.)

Q. (By Mr. McRoberts) Now, Mr. Day, will you explain in a little more detail just how these defects in the cast shop production in the matter of producing metal would carry on through into the finished product, and what effect that would have?

Trial Examiner Ruckel: As it now affects the case of—

Mr. McRoberts: William Elliott and Williams.

Trial Examiner Ruckel: The witness has stated that
1083 Elliott's production was all right.

Mr. McRoberts: Let me clarify that.

Q. When you say Mr. Elliott's production was all right, Mr. Day, are you referring to quantity or quality?

A. Quantity.

Q. Referring to this question of defects in the metal, will you tell us how those were carried through into the finished product and what effect they would have?

A. Cast shop defects are inherent defects in the metal. That is, it is not a surface defect, but this definitely occurs in the body of the metal. In such a sheet you are liable to have a weak sheet, or liable to have a split, or gas holes, which cause a weak place in that sheet, and par-

ticularly in the manufacture of ammunitions these defects are of a very serious nature, particularly if it happens in a cartridge, because it would possibly cause a split shell or malfunctioning of the gun, and particularly in action.

Q. What is a split shell? What do you mean by that?

A. The shell bursts and it may not function in a machine gun, or a gas block back, blow back in a man's face and put his eyes out. It means it splits in the chamber of the gun and blows back, and also the fact these shells become deformed and split cause malfunctioning of the gun's main parts which will jam the gun,
1084 and particularly in aircraft ammunition would be of a very serious nature.

Q. Was the greater part of production of the cast shop during the spring and summer of this year, and at the present time, used for the production of military ammunition?

A. A large percentage of it has been used for military ammunition all year.

Q. Has that percentage increased?

A. It has been continually getting higher, until it is almost one hundred per cent at the present time.

Q. In military ammunition what effect will an occasional defect of this sort in brass have upon the entire lot of ammunition that is produced?

A. If an inspector discovers one defect of this nature the whole lot is rejected.

Q. By whole lot what do you mean?

A. It may be a matter of several hundred thousand?

Q. Several hundred thousand cartridges?

A. Yes sir.

Q. Mr. Day, in the making of ammunition, and particularly military ammunition, do you require an especially high quality of brass?

A. It requires the very highest quality from the casting point of view.

Q. Does that have anything to do with the fact that you make your own brass?

1085 A. The brass mill was originally built so that the Western Cartridge Company might have control over the metal they use in the manufacture of their ammunition. It is particularly difficult to get metal of high

enough quality to make good reliable ammunition, and particularly with the increased use of machine guns and airplanes it is particularly important to have ammunition that is reliable in every shot. The failure of a gun is a very serious thing and one shell in a million may be the cause of it.

Q. Going back to the causes of these defects again, we have been talking about, if care is exercised in the casting operations, and if your instructions and rules are followed do you have these defects?

Mr. Evans: I object to counsel's leading of the witness.

Trial Examiner Ruckel: Objection sustained. All he is asking it seems is if everyone is perfect then the result is perfect.

Mr. McRoberts: I disagree, Mr. Examiner, very respectfully, and I am referring only to the operations. In metal and machinery there is equipment—

Trial Examiner Ruckey: Read the question.

Mr. McRoberts: I will withdraw the question.

Q. Mr. Day, will you state what, in your opinion, is the cause of the kind of defects that have been testi-
1086 fied about that you found during the year 1941?

A. These defects are caused by failure to follow proper testing procedure, such as puddling the metal properly, properly getting the metal in temperature to find properly; using the proper covers for the metal, and proper care of the molds; proper speed in pouring; proper care of runner boxes; a number of details that should be watched, and the omission of any one is liable to cause serious trouble. It is the caster's duty to watch that, and he alone, and he should be assured he is making good metal. He knows whether he is following proper procedure or not.

Q. What was the information that you received from the foremen in the shop as to what particular things were causing these defects in the months of May, June and July 1941?

Mr. Evans: I object to the question as general and covering the whole department of 36 men, and only two are involved here.

Trial Examiner Ruckel: He may answer.

Q. Go ahead and answer, Mr. Day.

A. The thing that caused defects principally was the failure of the men to follow these instructions, and the foremen reported difficulty in getting them to follow instructions.

Q. Did they report why they were having difficulty in getting them to follow instructions?

A. They reported particularly Elliott made com-
1087 ment, where we had written instructions posted in the shop, they were no good, that the men in the shop knew more about making it than the men who wrote the instructions, and general widespread contempt of supervisory forces and disregard of their instructions.

Q. By whom?

A. Particularly Williams and Elliott.

Mr. Evans: I move to strike the answer of the witness as being general and being conclusions.

Trial Examiner Ruckel: Objection overruled.

A. Men are more or less inclined to follow—shall I say men who are most bold? If one man defies the rules and authority they feel they have the privilege, and particularly newer men feel if some of these boys could get away with it maybe all of them could.

Mr. Evans: I move to strike that as a conclusion.

Trial Examiner Ruckel: It may be stricken.

Q. I will ask you whether you have just stated here what was reported to you was happening in your own shop?

A. It was.

Mr. Evans: I move to strike it as too general.

Trial Examiner Ruckel: What was it that was reported to you?

A. This was a general trouble. That is, the attitude of the men in the shop was such they had disregard
1088 for the quality and quantity produced and we had to do something to get them back in line.

Mr. Evans: I move to strike it as a conclusion of the witness.

Q. (By Trial Examiner Ruckel) Who gave you these reports and when?

A. I was in constant contact with the men and foremen and everybody and trying to find out what was the trouble.

Q. (By Mr. McRoberts) Did you get these reports from your foreman?

A. Yes, I got the reports from the foremen and the supervisory force in charge.

Q. (By Trial Examiner Ruckel) Just what were the reports?

A. Disregarding instructions.

Q. That the department as a whole was not following instructions?

A. Yes, and particularly these two men were leaders and the ones who—shall I say the most defiant and showed the most disregard to following instructions.

Mr. Evans: I move to strike that.

Q. (By Mr. McRoberts) The two you referred to were who?

A. Elliott and Williams.

Trial Examiner Ruckel: Objection overruled.

Q. What happened on the night of July 22, 1941?

A. We had made a decision or we had proposed
1089 a plan to change shifts, that is, change our schedule, so the entire mill and cast shop would work on the same schedule, and when we have four shift schedule they can change at different days in the week and still get in the same number of hours, but they do not change at the same time.

Trial Examiner Ruckel: You were asked what happened on July 22nd.

A. I was trying to lead up to that. Mr. Carleton in discussion with Williams in the cast shop—not Williams, I beg your pardon; and it is Elliott.

Mr. Evans: I object to the conversation as hearsay as far as this witness is concerned,

Q. (By Mr. McRoberts) What was it Mr. Carlton reported to you?

A. Carlton reported to me in a discussion with Elliott—

Q. (By Trial Examiner Ruckel) This was on July 22nd now?

A. Yes. That the men would lose money by the change.

Q. (By Mr. McRoberts) Who had said that?

A. Elliott; that they were trying to beat the men out of some more money, that they were continuing their policy of trying to rob the employes, and a general dis-

cussion along that line. As a matter of fact you cannot change shifts and rob any employe when you work full time and the Company pays out the same money.

Mr. Evans: I move to strike out the conclusion.

1090 Trial Examiner Ruckel: It may be stricken.

Q. (By Mr. McRoberts) When was this incident reported to you?

A. The morning of the 23rd.

Q. The morning of July 23rd?

A. Yes.

Q. Who is Mr. Carlton?

A. He is night superintendent.

Q. Did he make any recommendation to you?

A. He said "I don't see how you can run a cast shop with a man talking that way all the time".

Q. Did you make any decision then as to what was to be done?

A. I said I guess we will finally have to get rid of him.

Q. Did you give any instructions or orders?

A. I send word by Mr. Gerding that day, who was on the day shift, to have Elliott come in and see me.

Q. That was on the day of July 23rd?

A. Yes.

Q. You instructed him to come in to see you?

A. Yes.

Q. When did he finally come in?

A. The following Saturday morning, and I believe that was the 26th.

Q. The 25th?

1091 A. Yes.

Q. What took place?

A. It ended up by telling him—

Trial Examiner Ruckel: We want what took place and not merely the end of it.

A. I had some discussion in regard to the remarks he had made, his attitude toward the management—

Mr. Evans: These are conclusions, and I object to them.

Trial Examiner Ruckel: Tell us what you said to him and what he said to you.

A. I cannot remember exactly what I said.

Trial Examiner Ruckel: The substance; we do not expect you to give the exact words, but we do not want merely a summary.

A. I told Elliott we could not tolerate a man who was continually talking about the supervisory force and talking about the Company the way that he had done; that I had done everything I possibly could to correct things in the plant, and so far as I was concerned I knew of things that were not completed, and he had no complaint, and the only complaints he had were what happened years before I had charge of the shop and which conditions you cannot go back years to correct, and whether they were right or wrong I didn't know, and under operating conditions at present everything was taken care of to his satisfac-
1092 tion, he had no definite complaint of anything that had not been done, and I told him in spite of that he continued to criticize the management and supervisory forces, and under those conditions I could not tolerate him in the casting shop. I told him he had the right of appeal to any other superior officer in the company he wished to go to and if they told me I had to use him I would get along the best I could, but conditions in the cast shop absolutely had to be improved.

Q. (By Mr. McRoberts) After that did he leave then?

A. With that he left.

Q. Was he ever sent back to you by any higher official?

A. No sir.

Q. I will ask you, Mr. Day, whether following the discharge of Williams and Elliott the conditions in the casting shop improved?

Mr. Evans: I object to counsel leading the witness.

Trial Examiner Ruckel: Objection sustained.

Q. What happened to conditions in the cast shop after you discharged Williams and Elliott?

A. Conditions in general in the shop were better in most every respect. Men took care of their shops better, and took care of their jobs better, the quality improved, and there was less ill feeling toward the Company, and our production was better, and things moved along peaceful ever since.

1093 Q. Mr. Day, going back to these records that are kept with respect to the operators of each of these furnaces or shops, are those kept on the basis of the hours of actual production?

A. Yes. That is, for instance, the furnace—

Q. What if a furnace is down?

Q. We have cases where a furnace burns through, that means a furnace may be out all day before we can get another one, and those hours are not included.

Q. If a furnace is down for any reason is that excluded?

A. That is excluded in these production figures. These are production on actual hours. That quite frequently happens in the shop that these furnaces burn through.

Q. Mr. Day, going back to this change of shift in which you said it was reported to you Elliott was complaining the employes would lose money by that, was there any change of pay of employes under this change of shifts?

A. No.

Q. The employes were being paid the same pay for the same work?

A. Yes. Subsequently they asked to be changed to the way we had proposed at that time of their own free will and accord.

Q. In other words, you had not put this shift into effect at the time Elliott complained?

1094 A. No, we stayed right where we were and the rolling changed shifts at that time, but the cast shop stayed the same. The rolling mill changed according to the proposed schedule, and we wanted the cast shop to change so they would be working on the same schedule at that time.

Q. But you had not put that into effect?

A. We hadn't put that into effect, and apparently they didn't want it; but a little later on they asked for and we did change it.

Q. By "they" who do you mean?

A. The men in the cast shop.

Q. And that is now in effect?

A. That is now in effect, and it was definitely schedule for the employes and it gave them better hours over the length of time.

Mr. Evans: I move to strike the conclusion of the witness.

Trial Examiner Ruckel: It may be stricken.

Mr. McRoberts: Mark this as an exhibit, please.

(Said document was thereupon marked, for identification, "Respondent's Exhibit No. 12.")

Q. I will show you a paper which has been identified as

Respondent's exhibit number 12, and ask you to state, briefly, what that is?

A. This is an agreement between the employes of
1095 the cast shop, through the independent union, and the management.

Q. And that agreement, which is dated July 11, 1941—

A. It is a revision of the one of March 18th.

Q. (By Trial Examiner Ruckel) What is the date of it?

A. This is the date of July 11th, and it is a revision of the March 18th agreement.

Q. (By Mr. McRoberts) Then did that agreement go into effect in the casting shop?

A. This went into effect, yes.

Q. (By Trial Examiner Ruckel) When?

A. This is dated the 11th. The actual rates went into effect on the 13th.

Q. What was the date of Elliott's discharge? The 25th?

A. I believe so.

Q. (By Mr. McRoberts) That is your signature on this Respondent's Exhibit Number 12, isn't it, Mr. Day?

A. Yes sir.

Q. And the signatures of various representatives of the union?

A. Various representatives of the independent union.

Mr. McRoberts: We offer in evidence Respondent's Exhibits 11 and 12, Mr. Examiner.

Trial Examiner Ruckel: Have you seen them, Mr. Evans?

Mr. Evans: No, I have not seen number 12. May I ask one question about number 12 at this point?

1096 Trial Examiner Ruckel: You may inquire.

Q. (By Mr. Evans) Are the names which appear in the lower left-hand corner the representatives in the cast shop?

A. They are the Board.

Q. Board of what?

A. Members of the independent union Board.

Q. (By Trial Examiner Ruckel) Executive Board?

A. Yes, sir.

Q. (By Mr. Evans) Did they negotiate this revision?

A. Chapman did as representative.

Q. Did Toss, Jones, Heath and Harding participate in any of the discussions?

A. Yes sir.

Q. Did they work in the cast shop—any of them?

A. These men discussed with representatives of the Company the matter of the rates included in that, and that was all worked out with the independent—

Trial Examiner Ruckel: You were asked if any of them worked in the cast shop?

A. No, I don't think so. Wait, and I will look at it. No.

Q. (By Mr. Evans) Chapman—

A. Chapman represents that division.

Q. But he is not an employe in the cast shop?

A. No.

Q. So none of these individuals who negotiated this
1097 revision worked in the cast shop?

A. No.

Mr. Evans: I have no objection.

Trial Examiner Ruckel: It will be admitted.

(Said documents, marked, for identification "Respondent's Exhibits Nos. 11 and 12," were thereupon received in evidence.)

Q. (By Mr. McRoberts) Mr. Day, in negotiating this revision who in the cast shop did you negotiate with?

Mr. Evans: I object to the question. It assumes the answer.

Trial Examiner Ruckel: Objection sustained.

The Witness: I would like to make this statement, if I may.

Mr. McRoberts: Let me ask you a question.

Trial Examiner Ruckel: Do not volunteer statements, Mr. Day, if you please. Your counsel is very competent.

Q. Mr. Day, did you negotiate this agreement with anyone, and if so, who?

Trial Examiner Ruckel: If you are in doubt about the word "negotiate" just tell us what you did.

A. This agreement, as far as I know right now, there was no change over the previous one except the rates.

Q. With whom did you discuss the rates?

A. The rates were discussed with the people as a
1098 group in the cast shop after this petition was signed.

They sent a petition to me and they requested for this change of rates which meant the general increase of everyone, and I am not in a position to grant a general increase in any department, and it finally ended up in a

general increase to the whole plant, on the 13th of July, I believe it was.

Q. And this agreement was then signed by the parties whose signatures appear there?

A. Yes.

Trial Examiner Ruckel: You are referring now to—

Mr. McRoberts: This agreement, Respondent's Exhibit number 12. May I substitute copies for that?

Trial Examiner Ruckel: Leave given to withdraw the original and substitute copies.

Mr. McRoberts: If you will indulge me just a moment, I have to make arrangements about some witnesses.

Trial Examiner Ruckel: Yes. May I see the exhibits 11 and 12?

Mr. McRoberts: Yes, here they are.

* * * * * * *

1124 Q. (By Mr. Evans) This agreement with the cast shop covered the employes only on the second floor, is that correct?

A. Yes sir.

Q. And did not cover the scrap department on the same floor?

A. No.

Q. Approximately, how many employes were in the cast shop on the second floor that were covered by this agreement in March 1941?

A. That is a good ways back.

Q. Just approximately?

A. Somewhere between 80 and 120 I would say.

Q. Was any question raised by you as to the propriety of the cast shop as a bargaining unit?

A. No, I don't think so.

Q. Was there any question raised by you as to the majority status of the independent union for that part of that department?

A. I never considered it as any of my business—

Q. Just answer the question, please.

1125 Mr. McRoberts: I think that is a perfect answer.

Mr. Evans: I move to strike it out.

Trial Examiner Ruckel: He may answer and then ex-

plain it. The answer is "No." What explanation did you want to make?

A. Pardon me?

Trial Examiner Ruckel: You said you did not consider it any of your business and I take it by that you did not raise the question.

The Witness: No.

Trial Examiner Ruckel: And you started to give some explanation. You may give it.

The Witness: The Company had a contract with the independent union or an agreement with the independent union as bargaining agent, and I considered it my business to deal with their representatives without questioning whether they had a majority in any group or questioning the membership. They were bargaining for all employes and Chapman was definitely Chairman of the Board.

Q. (By Mr. Evans) And that agreement was some three and a half years old at the time that you negotiated this separate agreement for the east shop?

A. I don't remember just what the date of that was.

Q. It was some years old; you knew that?

A. Yes.

Q. Is that also true of the agreement that you
1126 negotiated for the roll shop as to the unit and majority status of the union?

A. I don't know whether they had a majority or not. I did not question that the same way.

Q. You did not question the propriety of the unit when you signed the agreement for the roll shop?

A. Only that I was dealing with representatives of the union—the elected representatives of the union, of which Chapman was the head.

Q. The roll shop covered approximately how much of the brass mill, as far as numbers of employes are concerned?

A. There are a number of departments in the rolling mill, not particularly the rolling unit. I treat those as a group and not as rolling unit. Probably as a whole unit in the neighborhood of 50 persons.

Q. When did this petition go around for raise in pay in the east shop?

A. I would say that was the latter part of May or the first of June. I don't remember the exact time.

Q. Do you still have that petition?

A. I might have.

Q. Do you recall what it said?

A. Just asked for ten cents an hour flat increase.

Q. And as the result of that petition you say you called the employes together and discussed it?

1127 A. Yes sir.

Q. How soon after the petition was passed around?

A. I imagine a couple of weeks.

Q. Where did you call the meeting?

A. Out in the laboratory building in connection with the casting department.

Q. How many employes were present?

A. I did not count them.

Q. Approximately how many?

A. I guess around forty or fifty.

Q. What shifts were included? Was there more than one shift included?

A. I think I had two shifts at the time.

Q. Did you hold more than one meeting so as to cover the shifts?

A. I don't think I did. I think I only met with one meeting and the news spread fast enough.

Q. Were foremen present at the meeting?

A. Some of them were.

Q. Did you instruct them to be there?

A. No.

Q. What foremen were there?

A. I don't know whether I can tell you exactly.

Q. Had the foremen signed the petition also?

A. I think Charley Andrus was there—I am pretty

1128 sure he was there.

Q. Had any of the foremen signed the petition?

A. No, I don't believe so.

Q. What was said and what happened at this meeting that you called?

A. At that time we had already granted a number of increases—

Q. The question is what was said at that meeting?

A. I discussed with them the possibility of when they

would be satisfied or when was enough and what was involved, and I told them a general increase would be a matter of not only one department or two departments and it would cover possibly the whole mill or may be the whole plant, and anything of that kind would have to be considered as a general increase and would be out of my hands to grant, but I did try to give them some figures on what had already been done.

Q. What did you say?

A. I don't remember exactly what I did say, but that was the general line of discussion. When I got the petition I thought the demand was a little bit strong in the face of what had already happened.

Q. (By Mr. McRoberts) What do you mean already had happened?

A. Raises previous to that.

Q. That had already been given?

A. Yes.

Q. (By Mr. Evans: And you called this meeting for
1129 the purpose of explaining to the employes the fact that raises had been given and they should not expect too much, is that it?

A. I called this meeting to explain to them what it meant and that I was beginning to feel regardless of what we did do they would not be satisfied probably, and I also explained to them a general increase, that that could not be considered for one department, and it would have to be handled as a company proposition—something general throughout the entire plant.

Q. Showing you Board's Exhibit number 15, I will ask you to state whether or not the rates set forth in paragraph 12 were any increase or decrease over what had been in effect before the agreement?

A. You ask whether these rates were an increase—I want to get your question clear again, please.

Q. Board's Exhibit number 15, paragraph 12, contains certain rates for cast shop employes; were those rates in any way different from those in effect prior to the agreement?

A. Yes.

Q. Were them increases or decreases?

A. Increases.

Q. So that in March you had bargained and granted increases for a particular department?

A. Yes.

1130 Q. Shortly after that you told them that could not be done, in this meeting of May or June, is that correct?

Mr. McRoberts: That is not what the witness testified to, Mr. Evans.

Mr. Evans: I am asking him.

Trial Examiner Ruckel: The witness has testified he told them it could not be done.

Mr. McRoberts: No blanket increase could be granted.

The Witness: May I make an explanation of the difference?

Mr. McRoberts: Yes, please do.

Trial Examiner Ruckel: Yes.

A. The petition asked for a flat increase to everyone. The rates included in this March 18th agreement was a change in the bracket and it did not necessarily mean there was not an increase. That is, the brackets were changed and certain individuals in them and not everyone was changed.

Q. (By Trial Examiner Ruckel) You mean the limits within which—

A. Within limits different jobs were changed in this original agreement.

Q. (By Mr. McRoberts) Of March 18, 1941.

A. Of March 18, 1941, and the other was a flat increase to everyone at the same time.

Q. (By Mr. Evans) You said that that could not be
1131 done by a single department and that it had to be done by the mill as a whole or the plant as a whole?

A. I did not have the authority to do so.

Q. Did this petition refer to any representatives through whom the matter should be taken up?

A. I think this petition—no, it didn't. I don't believe so.

Q. In your talk to the employees did you suggest to them that they take the matter up through their duly elected representatives?

A. I told them the matter of general increase would have to be negotiated through the Company representatives and that the independent union was the bargaining agent for the Company.

Q. (By Trial Examiner Ruckel) What do you mean by that?

A. That the independent union—I don't know as I could explain it further than they had the agreement on bargaining and working conditions.

Q. (By Mr. Evans) Did this meeting take place before or after the signing of the contract with the independent union on June 4, 1941?

A. I am not sure about that.

Q. Did you have a conversation with Grunner about the representative's position of the independent union in the cast shop?

1132 A. I don't understand that question—how you mean that?

Q. Did you have a conversation with Grunner concerning the representative's job in the cast shop?

A. I don't think so.

Q. Did you discuss with him the fact that Elliott was going to quit the job as representative?

A. I think Grunner volunteered that information to me.

Mr. Evans: I move to strike the conclusion of the witness.

Trial Examiner Ruckel: It may be stricken. Tell us how it came about.

A. Grunner came to me complaining about the trouble he had with Elliott; he and Elliott had gotten into some kind of an argument about being a representative of the independent union.

Q. (By Mr. Evans) Tell us what was said.

A. I am trying to. He told me that Elliott wanted to resign as representative of the independent union, but he did not want him to be the representative.

Q. (By Mr. McRoberts) He did not want who? Clarify that.

A. Elliott did not want Grunner to be, and I think he made a remark something like this, "I am just telling you not to take this because it will save your feelings and they will tell you they don't want you," or something like that,

1133 and he was inferring to Grunner the people did not want him as representative, and Grunner came to me to complain about the trouble with Elliott, and that is the discussion I had with him.

Q. (By Mr. Evans) What did you say?

A. I told him it was none of my business whether he was representative or not.

Q. Did Grunner become the representative?

A. I don't believe he did. I had nothing to do with the election of representative.

Q. They came in and took up grievances with you, didn't they?

A. Yes, but Grunner never brought any grievances to me outside of maybe one of his, but it was personal; he did not come at that time as representative of the union.

Q. Coming down to these rejects which you testified to for the period of January through November, how were those figures computed?

A. You mean this sheet we discussed—the numbers of each month?

Q. Yes, beginning in January it was zero and so forth.

A. We had reject slips turned in at the inspection department, and the reject slip told the number of bars rejected on certain orders and the reason for rejection, and that is the actual number of bars, and there is no computation there.

1134 Q. In other words, there were three bars rejected?

A. That is right.

Q. Are the bars all the same size?

A. They vary a little.

Q. Do they vary in any substantial amount?

A. Well, I would say there is about—the heaviest one is probably 50 to 75 per cent heavier than the lighter one.

Q. It is possible then for there to be a smaller number of rejects for a particular month but actually involve a greater amount of metal as compared to another month with a larger number of rejects?

A. That is hardly possible because while we use different size bars the average size is about the same. You may have a big bar on this shop and a little one over here, but that is always a big bar and a little bar, and it averages about the same, and some shops average bigger than others.

Q. Are they always average bars that are rejected?

A. No, sir, they might be little ones and they might be big ones.

Q. It might be big ones one month and little ones the next month, is that correct, so far as you know?

A. It is not probable.

Q. You do not keep these rejects by weight?

A. No. From our records we could probably accumulate it. We consider the number a fair enough indi-
1135 cation of how the employe is running, without going to the difficulty—we have this reported by certain bar sizes.

Q. Does the reject slip show the weight of the metal rejected?

A. It shows the bar size, and the bars go through by width; they show a bar of certain width and mixture is rejected.

Q. Is it true that during the first several months of 1941 a large number of new employes were being hired and that the pay roll greatly increased?

A. Not such a large percentage, no.

Q. Approximately how many employes were there in the brass mill on January 1st?

Mr. McRoberts: Was that the brass mill or the casting shop?

Q. I assume these rejects are for the brass mill. Am I correct in that?

A. Yes.

Mr. McRoberts: These rejects are for the entire cast shop, are they?

Q. You are talking about the brass mill as a group or just the casting shop alone?

Q. (By Mr. Evans) I am asking you what you included in your reject figures about which you testified.

A. The reject figure comes from the rolling mill and the metal is rejected after it is processed through the
1136 rolling mill.

Q. Does it cover the entire rolling mill or just from the cast shop?

A. It is bars from the cast shop coming through the rolling mill. All bars from the cast shop are processed through the rolling mill.

Q. Are the rejects which are attributable only to the cast shop included in the figures of rejects in the rolling process?

A. These are defects due to cast shop.

Q. Approximately how many employes did you have in the cast shop on January 1st?

A. I think I said between 80 and 120, didn't I?

Q. That was in March 1941.

A. It was about the same; still within that range.

Q. Do you keep separate records for the cast shop as to personnel?

A. Yes sir.

Q. It would be fairly easy to compute the number of employes on any particular day in the cast shop?

A. Yes.

Q. Would you prepare for us the number of employes in the cast shop for each of the periods covered by your figures on rejects?

A. That is up to counsel, isn't it?

Q. (By Mr. McRoberts) Would it be much of a job, Mr. Day?

1137 A. We could do it, yes.

Q. I know you are busy over there and I hate to ask you to do anything else?

A. We can do it, yes.

Q. Let's do it then. Is there any substantial difference in the number now and the number at the first of the year, in the cast shop?

A. Yes, there is.

Mr. McRoberts: May I ask another question there, Mr. Evans?

Mr. Evans: Sure.

Q. (By Mr. McRoberts) Have you started training new men in the cast shop just recently in preparation for this new mill?

A. Yes.

Q. Is that what accounts for the substantial difference in the number of the cast shop in the past year?

A. In the past month or two we have taken on several with the idea of training them for the new mill.

Q. Until a month or two has the number in the cast shop been substantially the same throughout the year?

A. Yes. There has been some increase in the first six months of the year.

Q. We will get the figures.

A. Yes sir.

1138 Q. (By Mr. Evans) This matter of the shift changes, which you say you discussed with Mr. Carlton, in July 1941, was the fact that Elliott criticised this change one of the reasons for his discharge, and the fact that he discussed it with other employes?

A. Yes, the remarks he made about the Company and the reasons for the changes.

Q. And the fact that he criticised the management, to management and to other employes?

A. The fact that everything we did was wrong and he made criticism—

Mr. Evans: I move to strike that.

Mr. McRoberts: Finish the answer.

Trial Examiner Ruckel: Yes, finish the answer.

A. —he made criticism for which he had no justification.

Mr. Evans: I move to strike that as a conclusion.

Trial Examiner Ruckel: It may be stricken.

Q. Had Carlton gone around to various employes to see how they felt about these shift changes?

A. I think so, yes.

Q. Did Carlton report that anybody else criticised or disagreed with the changes?

A. No.

Q. Elliott was the only one?

A. He reported, I think, some of them disagreed
1139 with the changes, but not in the manner that Elliott did.

Q. Did this change result in the loss of overtime pay to employes?

A. Well, I don't think it did. I don't know why it could.

Q. Wasn't that the criticism that Elliott made?

A. He made the statement, but I don't think he could back it up.

Q. Did you figure it out?

A. I am trying to think just what were the objections to that change. I think the objections of one group was they lost out on their Sundays.

Q. Which was overtime pay?

A. No. Sunday isn't overtime. There may have been some way in effecting that change—this might have been true, and I wouldn't say positive, under this change there was one group, from time to time it averaged out about the same, that gets an overtime day once in a while. It might have been this particular week that group would not have gotten the overtime day, but they would have gotten it a subsequent date. These changes were figured out over a period of time everybody averages the same.

This change that was figured out at that time made everything on a straight period, working five days straight and off two days.

Q. Before that what was the case?

1140 A. There was an irregular working period and they did not always have two days off.

Q. In other words, one shift was made then that would get in an overtime pay day, because the shift—

A. When we made the change it is possible one group missed an overtime pay day at this time, which they were bound to get back at a subsequent time. As far as the Company was concerned, there was one group that got it that way; in so far as the Company was concerned, one group got it regardless of what we did.

Q. What was the rule in effect before the change and what was exactly the change?

A. I cannot remember that exactly, but it was changed to a straight five days; every time they worked on a shift they worked five days and they had two days off on their change. On the other change sometimes they worked six days straight or four days straight, and may be only had one day off between changes, and it was a desirable change from the point of view of all employes whose schedules we changed, it made it possible for every individual to have two days off between shift changes.

Mr. Evans: I move to strike the conclusion of the witness.

Trial Examiner Ruckel: It may be stricken.

Q. You say later they asked for the change. How

1141 much later and who asked?

A. It wasn't very long—I don't remember exactly—but the men working in the cast shop.

Q. Did they all come to you?

A. They talked to the foremen and they got the general opinion they wanted a change.

Q. You did not talk to any individual?

A. I didn't talk to any of them myself.

Q. It is just a general impression you got?

A. Yes.

Q. Was the matter discussed with representatives of the independent union before the new schedule was put into effect?

A. I am not sure about that. I believe it was, and I am sure it was satisfactory with a majority of the people.

Mr. Evans: I move to strike the conclusion of the witness.

Trial Examiner Ruckel: It may be stricken.

* * * * * * *

1143 Q. (By Trial Examiner Ruckel) Was Williams or Elliott's discharge discussed with representatives of the independent union at any time?

A. No sir.

Q. Paragraph 9 of the agreement of March 18th seems to provide that the Company show the union representative, beyond a reasonable doubt, that the man has failed in one of the following, and names five respects; you say it was never discussed with the representative of the union?

A. Pardon me; I didn't get the question.

Q. It was merely repetition of the other, bearing in mind the contract makes that provision; I say his discharge was never discussed with a representative of the union before it took place?

A. No.

Q. What was the immediate factor which determined you to discharge Elliott? You have spoken of certain complaints which he had made, the language in which he had couched them, with respect to the Company, but what was the particular thing?

A. The final one was his discussion with Carlton.

Q. When did that take place—that is, Carlton reported it to you, you mean?

1144 A. That was on the night of July 22nd.

Q. Tell us again what Mr. Carlton told you?

A. He told us every change we made they tried to beat the men out of some money and every change they made they tried to take advantage of the men—I don't know as I can say all of it, but the general impression was he was trying to make us out a bunch of thieves and every time we made a change everything was to the advantage of the Company and never considered the men.

Q. He had been doing that for sometime?

A. Yes.

Q. Did Carlton make any particular statement?

A. Carlton said to me "I don't know how you are going to have any discipline in the cast shop with conditions like that."

Q. Was this just a general statement, or did he have some specific statement of Elliott's in mind or some particular event in the cast shop which he attributed to Elliott's attitude?

A. The comment he made was in regard to the shift change.

Q. In other words, it was Elliott's criticism of the shift change which had occurred a day or two previously as conveyed to you by Carlton which determined you to discharge him?

A. The criticism of the shift change and the criti-
1145 cism right along, that each and every time the Company did something he would make it appear we were trying to beat the people out of something and at the same time the discussion was about the shift change.

Q. At one place in your testimony I think you stated that Elliott's objection to the bonus plan which had been in effect there was that by going off the bonus plan employes had lost money; was that the way I understood your testimony?

A. That is the way I gathered what he claimed.

Q. His objection was that he had not been paid a substantial sum which had accrued under the bonus plan?

A. I did not understand it that way when he commented to me. He made the comment to me the Company owed him seven thousand dollars they had beaten him out of under the bonus.

Q. I understood your testimony to be his contention was by abandoning the bonus plan and going back to straight-time basis that resulted in a loss?

A. That is what I thought he referred to. I wasn't in close contact with the casting department bonus, so I would not be competent to answer definitely only the discussion I had this year with him.

Q. You did find some of the conditions complained of in the casting shop were justified?

A. Yes.

1146 Q. And it was by reason of that contract Board's Exhibit number 15 and the extension contract Board's Exhibit 16 were signed?

A. We made a lot of changes in rates and we made a lot of changes in methods of shifting men.

Q. They recognized the fact that some of the circumstances which Elliott complained of were justified, is that right?

A. Yes, sure. I think in any set up you will always find things that might not be exactly right, and we try to make them as fair as we can.

Trial Examiner Ruckel: I have no further questions at this time.

Redirect Examination.

Q. (By Mr. McRoberts) Mr. Day, referring to either Respondent's exhibit number 11 or Board's exhibit number 15, and looking at paragraph 9, I see that that paragraph starts out that when the management wants to remove a man from the job they must do certain things. In your negotiations leading up to the writing of that agreement and your discussion with representatives of the men what did you refer to in that term "remove a man from a job"?

Mr. Evans: I think the agreement speaks for itself. There is no showing there were any negotiations on interpretation of the agreement.

Trial Examiner Ruckel: It might be ambiguous, so

1147 he may answer.

A. My interpretation of that is when we change a man from one job to another or possibly dismiss him.

Q. Do you know whether or not either Williams or Elliott ever complained to the independent union with reference to their discharges?

A. No, sir, they never did. They had the right of making a grievance case out of it if they so wished.

Q. Do you know whether a request was so made to make a grievance case out of it?

A. It never came to me.

* * * * * * *

1148 Q. You spoke of William Grunner coming to you with some grievance about Elliott; did he say anything about any threats Elliott made to him?

A. Yes. He made some sort of a threat, I don't re-
1149 member exactly what it was.

Q. Did you make any change in your method of inspection of materials furnished to the cast shop, or any kind of materials, during the year 1941?

Mr. Evans: May I interrupt a moment? I would like to strike the previous answer to the previous question, Mr. Examiner.

Trial Examiner Ruckel: The witness was about to answer further, I think.

Q. I am sorry. Had you finished your answer about Mr. Grunner and some sort of threat?

A. There was something definite and I was just trying to think what it was, and I think it occurred on the floor of the cast shop, but to state positively—that he was threatening with some sort of bodily violence if he did not keep his mouth shut.

* * * * * * *

1150 Q. Mr. Day, did you make any change in your method of inspecting materials furnished to the cast shop during the year 1941?

A. No, sir.

Q. Or any change in the kind or quality of materials furnished?

A. No, sir.

* * * * * * *

1151 Q. In the case of Elliott what was the reason, stated as briefly as possible, for your discharge of Elliott or your determination to discharge him on July 23rd, and your discharge of him on July 25th?

Mr. Evans: I object to that question.

Mr. McRoberts: It may be repetition.

Trial Examiner Ruckel: He may state.

A. Well, for the reason we could not tolerate a man in his position that was so critical of the management and supervisory forces at all times and it just was not possible to get along with a man with his attitude toward the management.

Q. Mr. Day, did you know on July 23rd or on
1152 July 25th whether Mr. Williams or Mr. Elliott were a member of the Molders and Foundryworkers Union that has been mentioned in this case?

A. No sir.

Q. Did membership in that union have anything to do with the discharge of either of those men or with your decision to make such discharges?

A. Not at all.

Q. Did you know whether either of these men held any office in that union?

A. No sir.

Q. Did the fact of being elected to office have anything to do with your decision?

A. No sir.

* * * * * * *

1153 Q. You knew that the A F of L union was active in organizing employes in the cast shop, did you not?

A. I read a lot in the papers about it.

Q. (By Trial Examiner Ruckel) Is that the only source of knowledge you had?

A. There was a lot of signs written up out on the cast shop out there—A F of L, in chalk, and occasionally you would see one up out there.

Q. (By Mr. Evans) In July employes wore buttons occasionally—A F of L?

A. I never saw an A F of L button in the cast shop, of any kind.

Q. You knew Elliott had resigned from the independent union?

1154 A. According to Gunner's testimony he had.

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1171 CHARLES ANDRUS,

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. McRoberts) State your name, please.

A. Charles Andrus.

* * * * * * *

1190 Q. Mr. Andrus, did you have William Elliott working under you?

A. Yes sir.

Q. Was he working under you during the year 1941?

A. Yes sir.

Q. Tell us about Mr. Elliott's attitude toward his work and the Company and the supervisors, and so forth?

A. Well, Mr. Elliott done a lot of talking.

Q. What kind of talking?

A. A lot fault finding with the Company.

Mr. Evans: I move to strike it as general.

Trial Examiner Ruckel: It may stand.

Q. Just tell what you mean by that?

A. Everything the Company seemed to do would be against the working man.

Q. Is that what Elliott would say do you mean?

1191 A. Yes sir.

Q. Tell us a little more about it.

A. Well, I know we changed our working schedules out there, and he said they just did it to take the extra time away from the men so they couldn't make that extra money.

Q. (By Trial Examiner Ruckel) That is the change in shift, wasn't it?

A. Change in working schedules. We were working a certain way so sometimes you would only have an eight hour relief, and you would get off at 7 o'clock this morning and you would have to come back at 3 o'clock this afternoon, and then again you would have two days off in three, and we tried to work that schedule out so they would have more time off between shifts and give every shift and every man the same number of hours and days in the week.

Q. Did you make any report to Mr. Gerding about Elliott?

A. I have.

Q. What were those reports about and what was the general nature of the reports that you made?

A. About talking so much in the shop to the men and finding fault with the work.

Q. What was the result of this in the shop, Mr. Andrus?

Mr. Evans: Objection. It calls for a conclusion.

Q. Describe what effect these conversations had in the shop as you observed it?

1192 Trial Examiner Ruckel: He may answer.

A. He would get four or five men and he would get them over there together and they would all talk to him ten or fifteen minutes and they would neglect their work and they wouldn't be attending to the furnaces or doing what they should, and he would go to one side of the shop or another and get four or five men over there and talk to them may be ten or fifteen minutes and leave the furnaces alone.

Mr. Evans: I move to strike it as too general.

Trial Examiner Ruckel: It may stand, subject to cross-examination.

Q. What about the general attitude of the shop and the men in the shop?

Mr. Evans: Objection; calls for a conclusion.

Q. Just describe it.

Trial Examiner Ruckel: He may answer.

Q. Go ahead.

A. He would make everybody dissatisfied.

Trial Examiner Ruckel: You were asked what the general attitude was and not who was responsible for it.

Q. Just describe what the general attitude of the men in the shop was following these difficulties with Elliott and conversations with Elliott, the general attitude toward the Company and supervisory force, and so on?

A. They didn't seem to want to go ahead and take

1193 orders like they should, by having so much discord in the shop all the while and finding fault.

Q. Did you make any other report or complaint to either Mr. Gerding or Mr. Day about the situation or about either Mr. Williams or Mr. Elliott than what you have told us?

A. I made a complaint to Mr. Day about Mr. Elliott.

Q. You made complaint to Mr. Day about Mr. Elliott?

A. Yes, sir.

Q. What were they?

A. About him going around from one side of the shop to the other and talking with the men and he said the Company was just trying to rob the men.

Q. Who said that?

A. Elliott.

Q. (By Trial Examiner Ruckel) Did he say that to you?

A. Yes sir.

Q. Elliott said that to you?

A. Yes, he told me that.

Q. When?

A. I don't know just the date. It was along in June.

Q. (By Mr. McRoberts) It was along in June of this year?

A. Yes sir.

Q. (By Trial Examiner Ruckel) How long before he was discharged?

A. May be four or five weeks.

1194 Q. (By Mr. McRoberts) Did he ever say that to the men in the shop?

A. Oh, yes, he said it to a lot of the men. I know one man came in the bathroom, and we were all changing clothes at that time; Mr. Olin donated some money to Cornell University.

Q. That is Mr. F. W. Olin?

A. That is Mr. F. W. Olin, and he said "Did you see that in the paper last night where F. W. Olin gave some money to Cornell?" He said "He just took that away from the working people. I feel just as if I gave that to Cornell just as much as Mr. Olin."

Q. Mr. Elliott said that?

A. Mr. Elliott said that in the bathroom, while he was changing clothes in the morning.

Q. To whom did he say that?

A. He said it to the whole crowd of workmen changing clothes on that shift in the cast shop.

Q. Can you tell us anything more about Mr. Elliott than you have already told us, Mr. Andrus? Can you think of anything else?

A. I don't know of anything just now.

Q. Did you complain to Mr. Gerding on one occasion or more than one occasion?

A. More than one.

1195 Q. Can you give us any idea how many occasions?

A. I should say three or four different times.

Q. And that is during what period?

A. That is during the months along in April, May and June.

Q. And that is regarding Elliott that you are speaking about?

A. Yes, sir.

Mr. McRoberts: I think that is all.

* * * * * * *

1219 Q. You say that Elliott would go around and talk to a group of men and take them away from their work or take their time away from their work; can you tell us any specific instance of that, and who was present, and about when?

A. The men on his shift; I don't know just who was on his shift at that time.

Q. Let's get the time.

A. What?

Q. Let's get the time set.

Q. (By Trial Examiner Ruckel) About when was it?

A. The time of day or time of month, or what?

Q. The time of month?

A. That was along in June.

Q. (By Mr. Evans) All right—

A. In fact he has done it more or less—

Q. Let us get it down to specific times and circumstances.

Mr. McRoberts: Had you finished your answer, Mr. Andrus?

A. No. I said in fact he had done it off and on for a long time, may be a year or two.

Q. Can you specify any specific occasions which you remember, and tell us who was there?

A. I don't remember all of the men. I know one
1220 fellow was there; he went from the west side of the shop over to the east side of the shop, and he was talking there with one of the casters.

Q. Who was this?

A. His name was Claypool.

Q. When did it take place?

A. I couldn't say the date or the month.

Q. About when? Was it 1941, 1940, or when?

A. 1941, yes sir.

Q. Was it the early part of 1941 or the middle?

A. I should say along may be in May.

Q. You say Claypool came over from another part of the plant to the casting shop?

A. No. I said Elliott came over from the west side of the shop to the east side.

Q. From the west side to the east side?

A. Yes sir.

Q. Did he talk to Claypool?

A. He talked to Claypool, yes, for ten or fifteen minutes, and there were a couple of other men around there, but who they were I don't recollect.

Q. You do not know what they said?

A. No, sir. I wasn't within 50 or 75 feet of them.

Q. So far as you know they might have been talking about their work?

1221 A. They might have been, and they might have been talking about something else. What the conversation was I couldn't say.

Q. Was there any other specific instance that you recall?

A. Why, several times before that he would get three or four men around him and talk to them, but I can't tell you the date or the time or anything else.

Q. Or who was there?

A. Or who was there.

Q. You just remember Elliott was there?

A. I remember Elliott was there, and there were four or five men around him.

Q. (By Trial Examiner Ruckel) What do you mean, he got them around him? Might they not have come up to him?

A. He would start off and go away from his furnace to another furnace and start talking, and the first thing you know there would be four or five other fellows walk over there and they would hold a conversation there for ten or fifteen minutes.

Mr. Evans: I have no further questions.

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1233 EARL JONES,

a witness, called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. McRoberts) Will you state your name, please.
A. Earl Jones.

* * * * * * *

1255 Q. Mr. Jones, I will ask you whether at any time in 1937, or at any other time, you said to William Elliott "they want you down in the office to join the union"?
A. No sir.
Q. Or anything similar to that?
A. Not a thing.
Q. And did Mr. Elliott say "What Union?" and you say "I don't know, just the union; go down and find out," or anything to that effect?
A. No sir.
Q. Did you ever have Hartshorn, the superintendent, come along when you were talking to the men, with a list of names in your hand, and him ask you "What are you doing?" and Hartshorn tell you "You have no business doing that"?
A. No.
Q. And say "I haven't, but they gave me the list," or anything to that effect?
A. No sir.

* * * * * * *

1258 Q. Mr. Jones, going back to the William Elliott case, will you describe his attitude toward the supervisors and the Company during the time he was working under your supervision in the year 1941?
Mr. Evans: Objection; it has been asked and answered about three times by the same witness.
Mr. McRoberts: Did I say "Williams"?
Mr. Evans: Yes.
1259 Mr. McRoberts: I mean "Elliott".
Trial Examiner Ruckel: I think you said "Elliott".
Mr. Evans: I beg your pardon.

Trial Examiner Ruckel: How does the record read?

(Record read by reporter.)

Mr. Evans: I am sorry, and I will withdraw the objection.

Q. Go ahead.

A. Mr. Elliott always obeyed my orders.

Q. Were you familiar at all with his criticism or any kind of complaint?

A. The complaint was, you know they used to have a bonus, and he always claimed they cheated him out of quite a bit of money, and this bonus was put on production, and it is percentage, what we call gate end. I have heard him—

Q. You say he complained the Company cheated him out of some money in connection with the bonus?

A. Yes sir.

Q. You started to say "I have heard him".

A. He had told me.

Q. Have you heard him say that to others?

A. Yes sir.

Q. Just what did he say in that connection?

A. He would tell the fellows they cheated him out of so much money and the company owed him—sometimes he would make it five thousand and sometimes he would
1260 make it three thousand, whatever would come into his mind.

Mr. Evans: I move to strike it as a conclusion.

Trial Examiner Ruckel: It may be stricken.

Q. Did you hear any other statements by Elliott about the Company in addition to statements about this bonus matter?

A. Well, no, I never did.

Q. Did you discuss William Elliott with either Mr. Gerding or Mr. Day at any time shortly before July 23rd or July 25th, or were you asked about him?

A. Mr. Day or Mr. Gerding, neither one—

Q. Asked you?

A. —because he wasn't working for me.

Q. (By Trial Examiner Ruckel) He was not working with you at the time he was discharged?

A. No.

Q. Neither was Williams?

A. No sir.

Q. But you were asked about Williams?

A. Yes sir.

Q. But not about Elliott?

A. Not about Elliott.

Q. (By Mr. McRoberts) The last time Elliott had worked for you had been some time back, in the spring?

A. Either April or May, and it may have been part of April and May.

1261 Q. (By Trial Examiner Ruckel) That was the last time Williams worked for you?

A. Williams worked for me in June. Six weeks in there—some time in July.

Q. (By Mr. McRoberts) Williams worked for you some of May, and June, and some of July?

A. He worked six weeks right in there. I know he worked for me in June.

Trial Examiner Ruckel: Yes, it was Elliott you already testified did not work for you in April or May.

Mr. McRoberts: I think that is all.

Cross-Examination.

Q. (By Mr. Evans) This bonus business that Elliott complained about, that was over a period of years, was it?

A. I don't know just how long it was; I couldn't say. They have got the dates down there.

Q. I mean the period he complained about it was some years ago?

A. No, that was this spring, when he worked for me.

Q. Did he ever work under you before this spring?

A. Yes.

Q. This bonus had not been in effect for several years, had it?

A. I couldn't say just how many years it was or how long it was. It was in effect, but I couldn't say just

1262 how long. It was in there a while.

Q. To whom did he make the remark about the bonus other than yourself?

A. He made a remark to me about it.

Q. Who else besides yourself?
A. He made it to Bill Grunner.
Q. Who is he?
A. He was a caster there.
Q. How do you spell his name?
A. G-r-u-n-n-e-r.
Q. When did you hear any such statement?
A. That was last spring, along in the spring.
Q. That is as definite as you can make it?
A. Yes. I couldn't say the time.
Q. Who else was present at the time?
A. Just us three—Grunner and Elliott.
Q. Who started the conversation?
A. Bill Elliott.
Q. What was said?
A. He said, "Well, if we could collect what the Company owed us we would not have to be working." He said they cheated us out of five thousand bonus, and sometimes he would say three thousand; and I think one time he got it up to seven thousand.

Mr. Evans: I move to strike what he thinks.

1263 Trial Examiner Ruckel: It may stand.

Q. Is that the only other employe to whom Elliott made the remark?
A. I heard others talk about it, but that was just talk, and that was all I heard, and, of course, they talk a lot about what they hear.
Q. At that time Elliott was representative for the independent union for that department?
A. No, I don't believe he was right at that time. He was elected a little later.
Q. That was before he became representative?
A. Yes sir.
Q. In 1940 or 1941?
A. 1941.
Q. Did you hear any other employes say anything about the bonus system?
A. No.
Q. Nobody ever said anything for it or against it?
A. They never did say. I never did hear anyone make a remark.

Q. Either for or against the bonus system?

A. Nobody only Elliott.

Q. You worked for the Company fifteen years?

A. Yes sir.

Q. You did not report this conversation about the
1264 bonus to anybody, did you?

A. No sir.

* * * * * * *

1276 Q. With respect to Elliott's complaints about the bonus and the Company having cheated him out of the bonus, how long had he been making remarks such as that—with respect to the bonus, I mean?

1277 A. I couldn't say how long. He just started in last spring to me. I don't know—he may have to others.

Q. Did you have him under your direct supervision before last April and May?

A. Yes sir.

Q. The bonus had gone out of existence some time past, had it?

A. Yes, I don't know just how long.

Q. Was it a year or two years?

A. I couldn't say. Probably it was, and I couldn't say.

Q. So far as you know then Elliott's complaints about the bonus, had they been of long standing or had he just begun to make them last spring?

A. Last spring is the only time he made them to me.

Q. He might have made them to others over a period of time and you not heard it?

A. Yes sir.

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1283 GRANVILLE E. GERDING,

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. McRoberts) Will you state your name, please?

1284 A. Granville E. Gerding.

* * * * * * *

1291 Q. (By Mr. McRoberts) Mr. Gerding, did you have occasion to come in contact with William Elliott?

A. Yes sir.

Q. What was your contact with him?

A. Well, when I first went out in the casting shop I went around and introduced myself and talked to the men that way.

Q. Did you thereafter from time to time come in contact with William Elliott and talk with him and know anything about his attitude toward the company and his superior officers on the job?

A. I talked to William Elliott from time to time. The only thing he said to me—I shouldn't say the only thing, but one thing he said to me was the time when Mr. Olin had given several thousand dollars to a certain college; Elliott at that time told me he was taking the money out of the workmen's pockets; he felt as though he was donating that and not the Company, and I tried to have

1292 him explain that to me, but he couldn't and didn't.

Mr. Evans: I move to strike the conclusions of the witness.

Trial Examiner Ruckel: That he could not and did not may be sticken.

Q. Did Mr. Elliott ever make any other remarks with respect to the Company and its management and its attitude toward the men to you, or in your presence?

A. Just to me. Never in my presence. He has said from time to time the Company was trying to get the best of the men.

Q. Mr. Gerding, did you receive any reports from Mr. Elliott's foremen with respect to his work and his attitude?

A. I had several reports from time to time of Mr. Elliott going around the shop and talking to the men and taking the men's mind off their job.

Mr. Evans: I move to strike the conclusion of the witness.

Trial Examiner Ruckel: It may stand.

Q. During what period of time did you receive these reports?

A. I believe it was around in May and June—the same time.

Q. 1941?

A. 1941.

Q. Did these reports indicate in any way he was taking the men's mind off their jobs—

1293 Mr. Evans: Objection. Leading.

Trial Examiner Ruckel: He may answer.

A. Well, taking the man's mind off the job is keeping him away from the furnace, not able to charge that and not able to pour.

Mr. Evans: I move to strike the conclusion of the witness.

Q. These are reports that you received?

A. That is right.

Q. (By Trial Examiner Ruckel) Just what were the reports again, please?

A. Such as talking to a man and keeping him away from pouring and charging and doing his work.

Trial Examiner Ruckel: It may stand.

A. One report I had was that the men would be doing their job perfectly all right and he would discuss different problems with them and the men would get worked up and go around the shop, too, and stay away from their job; in other words, they wouldn't be on their job.

Mr. Evans: I move to strike the conclusions of the witness.

Trial Examiner Ruckel: It may stand.

Q. (By Mr. McRoberts) Did these reports tell you what it was Elliott was talking to the men about and that was keeping them away from their job?

1294 A. No sir.

Q. Did you receive any instructions from Mr. Day with respect to Elliott's discharge or having him report for discharge?

A. Yes sir.

Q. What were those instructions, and when did you receive them?

A. I was instructed to tell Mr. Elliott to come in to see Mr. Day.

Q. When was that you were instructed to do that?

A. He was supposed to come in on the morning of the 23rd.

Q. (By Trial Examiner Ruckel) July?

A. July 23, 1941.

Q. (By Mr. McRoberts) When did you receive those instructions from Mr. Day?

A. I received that instruction on the 22nd day of July, 1941.

Q. What did you do about it?

A. First I wrote a letter to the foreman and told the foreman to notify him to come in.

Q. Who was the foreman? Do you remember that, Mr. Gerding?

A. I just was trying to think. I don't remember the foreman now.

Q. What else did you do?

A. And Mrs. Elliott and I—I went up to the office
1295 and talked to Mrs. Elliott and told her to have him come in.

Q. Did William Elliott's wife work in the office?

A. In the brass mill office.

Q. She worked in the brass mill office?

A. Yes; not in the cast shop but in the brass mill.

Q. Did you do anything else about getting word to Elliott?

A. No, sir. I thought that was all that was necessary.

Q. Do you know when he did come in?

A. It was the 25th when he came; the 25th day of July.

Q. (By Trial Examiner Ruckel) What day of the week was July 25th?

A. I think that was Friday.

Q. (By Mr. McRoberts) Here is a calendar. His memory is pretty good. It was Friday.

A. Here is one thing I forgot there to mention when you asked me how William Elliott was notified. I ran into William Elliott on Thursday morning, when he was going home, and I believe he was doing some work somewhere was the reason he told me he didn't come in the day before and I met him right outside of the cafeteria door when he was going home.

Q. You told him then?

A. Yes sir.

Q. (By Mr. Evans) Front cafeteria door, and I couldn't tell you the exact spot. I recall it because I mentioned it to him at that time and I believe he was digging a
1296 well or something like that around his house.

Q. (By Mr. McRoberts) Around his own house?

A. Yes sir.

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1321 ORVILLE E. CARLTON,

a witness, called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. McRoberts) State your name, please.

A. Orville E. Carlton.

Q. Where do you live?

A. I live at 3533 California Avenue, Wood River Township.

Q. Where are you employed?

A. Western Cartridge Company.

Q. How long have you been with that Company, Mr. Carlton?

A. Almost eighteen years.

Q. What is your position with the Company?

A. I am night supervisor of the mill and casting shop.

Q. Is that the brass mill and casting shop?

A. Yes sir.

Q. How long have you held that position?

A. Almost two years now.

Q. Mr. Carlton, in that position did you have occasion to come in contact with William Elliott?

1322 A. I did.

Q. And to see and know his attitude toward the Company and his employers and the management?

A. Yes sir.

Q. Will you describe just what you saw and heard?

A. Mr. Elliott has always been very much opposed to any changes that the management might make and he

caused an awful lot of disturbance among his fellow-workmen by criticising the management to them.

Q. Be more specific; what sort of criticism?

Mr. Evans: I move to strike the conclusions.

Trial Examiner Ruckel: It may stand. Specify what you have in mind.

A. He would always tell the men about any change that happened to be coming up that it wouldn't do them any good and sort of make the men feel what we were doing was making changes that would not do them any good at all, such as may be beating them out of some extra time they might get.

Mr. Evans: I move to strike the answer of the witness as a mere conclusion.

Trial Examiner Ruckel: Tell us what specific charges he made.

Q. What would he say, Mr. Carlton, about these changes? Tell us in Elliott's own language as near as you can recall.

1323 A. This one particular case I talked to Elliott on is really the only one I have talked to him much about, was that we had a change up to change our hours of work, and we were taking a vote on that to see whether or not the majority wanted to change or stay the way they were working, and it was brought around to him and he says, "Well, I don't know why we want to vote on it", like that. "I don't see why Mr. Olin or Mr. Day doesn't come around and just tell you to sign it"; and I explained it to him it didn't matter who brought it around, all we wanted was their vote whether they wanted to work the way they were or on the new schedule, and he says "I don't know why they want to change it." He says "All the changes they make is just to beat us out of some money. We aren't going to make as much money if we should make a change like that. We are going to lose a lot of time."

So I talked to him about that and I couldn't see where they were going to lose any time, and I told him that, but he insisted they were, so I dropped the thing then as far as our conversation went at that particular time.

So the next day I was up in the shop again and one of his fellow-workmen called me over and he said "What is

that you are telling Elliott about us going to lose any of the time if we go on that new schedule?"
1324 and I said "I didn't tell Elliott that", and he said "I didn't think you did", but Elliott in bad faith was telling them I said they were foolish for going on that new change.

Q. By "I" you mean yourself?

A. That is right; that they would lose a lot of money if they went on it; so I went to Elliott right there and asked him why he told those fellows I said that, and he said "If I told them, what of it?" and I said "Nothing of it, only I don't like for you to be telling the men I said something that I didn't say", and he said "I don't know for sure I told them that" and I said "All I have is what this fellow told me, and I want you to understand if I want them told anything I will tell them myself."

Q. Did he say anything more about the bonus or what he had lost on that?

A. He said "Back when we were working on the production bonus, as soon as we got where we could make a little money the management took the bonus off, because they thought we were making too much money". That is what Elliott said.

Q. Did he say how much he had lost?

A. I don't remember exactly how much he told me, but he said there was several hundred dollars he had lost.

Q. Did he say anything more about the management and what they were doing to the men or anything of that
1325 sort, in addition to what you have told us?

A. Not that I remember word for word.

Q. Tell us the substance of it, Mr. Carlton, if there is anything else?

A. I guess there is not anything else.

Q. When was this last conversation with Elliott about this shift change and then this conversation the next day, with respect to the time of his discharge?

A. It was on July 22nd.

Q. It was on July 22nd; was that the last conversation with him?

A. No, that was my first conversation with him. That was on the third shift and we would be working from 12 until 8 o'clock, and—

Q. Did you report this matter to anyone?

A. I reported it to Mr. Day, the superintendent, the following morning at eight o'clock, and that would be on the 23rd.

Q. Did you make any recommendation to Mr. Day?

A. I recommended to Mr. Day we move Elliott from that department.

Q. What did you tell Mr. Day?

A. I told him due to the disturbance Elliott was causing among his fellow workmen we would be better off to let Elliott sit out in the office and not come in contact
1326 with other men down there.

Q. Did you say anything more than that? Tell us the whole conversation? What did Mr. Day say?

A. Mr. Day said he was going to call him into his office and have a talk with him, and he talked to me like—

Mr. Evans: I object.

Trial Examiner Ruckel: Sustained.

Q. Just what he said; what did Mr. Day say?

A. Mr. Day said he was going to make arrangements to move him from that department, that he might go as far as to discharge him.

Q. Now, Mr. Carlton, going back prior to this last occurrence, which took place about July 22nd, had you made any prior reports to Mr. Day, or anyone else, about Elliott and his actions in the shop?

A. No, I had not. That was my first report.

Q. That was the first occasion?

A. Yes sir.

Mr. McRoberts: I think that is all.

Mr. Evans: I move to strike the conclusion of the witness, that Elliott always opposed changes and criticised the men.

Trial Examiner Ruckel: It may stand. I think the record is clear. He mentioned one specific instance. You may cross-examine.

1327 Cross-Examination.

Q. (By Mr. Evans) In your talk with Elliott the first time did he point out to you how the men would lose time on this shift change?

A. No, he did not.

Q. Tell us what was said, exactly, regarding that?

A. Mr. Elliott said—

Q. First you approached him; what did you have in your hand, and what did you say, and everything, right from the beginning through the conversation?

A. I did not have anything in my hand. I approached Mr. Elliott after his foreman had called my attention to him being so opposed to this change and I approached Bill and I said "Bill, what is the matter with you and this new line-up".

Q. Who was the foreman who so reported?

A. Mr. Terry.

Q. (By Trial Examiner Ruckel) Who?

A. Clyde Terry.

Q. Was he Elliott's immediate foreman at the time of his discharge?

A. Yes sir.

Q. He had immediate supervision of him?

A. Yes sir.

Q. (By Mr. Evans) Before that meeting had you in-
1328 structed the foreman to ask each man whether he was in favor of this change in hours?

A. Yes sir.

Q. And then each foreman came and reported to you as to the reaction of the men, is that it?

A. Yes, in this particular case he did. This is the only one he called my attention to, because Bill raised such a fuss at the time he approached him.

Q. Was Elliott the only one mentioned by the foreman who did not want to change?

A. Yes.

Q. Or said he did not want to change?

A. Yes; he is the only one my attention was called to.

Q. You do not know about the other shifts, but as far as the night shift from 12 to 8 that was the case?

A. That is right. There could have been others that were opposed to it, but they did not call my attention to it.

Q. Tell us what else was said when you went to see Elliott?

A. I approached Mr. Elliott and I said "Bill, what is the matter with you and this new lineup?" and he said "It is

no good"; and I said "What is the matter with it?" and he said "We are going to lose a lot of time; we will not make as much money on that change." I said "Why won't you?" and he said "That will knock us out of some extra days we have been getting a week on the old
1329 schedule". I told him I failed to see that, but he said it was true, but he did not go as far as to show me where he was going to lose any time, and I wasn't able to see where he would.

Q. You mean would not lose any actual hours?

A. That is right.

Q. But they would lose some overtime hours, is that correct?

A. That is what he said, they would lose some time; he did not say whether it would be overtime or one day.

Q. Would they lose overtime?

A. Not as far as I could see, they couldn't lose anything by it—I don't know for sure about when over a period of time if it amounted to the same as the old one.

Q. Including overtime?

A. That is right.

Q. What else was said at that time?

A. I talked to him about that a little more and I said "I don't see, Bill, why you should be so opposed to that. It looks to me like it is a much better plan than the old one" and he said he didn't think so, and he went on to say the management were always screwing them up and messing them up with their changes, and they never would leave them alone, and he said "It is just like it was when we were on production bonus, as soon as we got where we could make a little money they took us off the bonus,
1330 because we were making too much".

Q. This was the first conversation you had with him?

A. That is right.

Q. What else was said?

A. Then he told me "This is a Hell of a way to take a vote, I think" and I said "How do you think we should do it, Bill?" and he said "I think we should have a secret vote; in other words, the same as you would at an election, and there wouldn't anyone know how you voted", and I

told him I didn't think it was necessary to have that, they we were not going to try to force it on them, and all we wanted was to get an opinion of how the men felt about it. He said "Well, God damn it, I don't see why Mr. Day or Mr. Olin doesn't bring this around and just tell you you have to sign it themselves, and that is what you are doing and making us say 'Yes'" and I told him "I don't see how you could figure that out", and he said "That is what you are doing"; and he began to get very hot about it, so I left him.

Q. Were you pretty hot, too?

A. No, I wasn't hot at that time.

Q. But you did report it to Mr. Day the next day?

A. I did.

Q. And suggest that Elliott be taken off the job?

A. That is right; and my attention had been called
1331 to Mr. Elliott's attitude several times before.

Mr. Evans: I move to strike that as not responsive.

Trial Examiner Ruckel: That may be stricken.

Q. Then you had another conversation with Elliott about it?

A. No, not about that. The next night.

Q. Who was this worker you say came to you?

A. A fellow named Jimmie Darr.

Q. Where did he work?

A. He worked in the same shop with Elliott, on the same shift with him.

Q. He worked on the night shift, too?

A. That is right.

Q. When was it he talked to you?

A. He talked to me the night of the 23rd, and that was the following night after I had my first conversation with Elliott.

Q. You went right to Elliott?

A. After Darr told me what Elliott said, yes.

Q. What was your conversation with Elliott at that time?

A. I spoke to Elliott and I said "How are you, Bill?" and he said "Fine. How are you?" and I said "I am madder than Hell."

Q. Were you?

A. No, not real mad, but I wasn't in very good humor, and he wanted to know what was the matter and I
1332 said "Well, I don't like it the way you told these fellows in the wash room I said you were going to lose a lot of time if you went on this new schedule", and he said "Did I tell them that?" and I said "I was told that you did" and he said "If I did, what of it?" and I said "Nothing, only I don't like for you to tell fellows that I say something that I didn't say", and he said "I don't know that I told them that", and I said "Well, we will just forget about it then."

Q. Was that all that was said at that time?

A. That is all I remember being said.

Q. You considered it a closed incident when you said you would forget about it?

A. I did.

Q. You did not report that conversation?

A. No, I made my report the morning of the 23rd after 8 o'clock to Mr. Day and I told him everything that had taken place, as far as I was concerned; it was up to him to carry it on from there.

Q. (By Trial Examiner Ruckel) Did you make a report on this second conversation with Elliott to Day?

A. No.

Mr. Evans: That is all.

Re-Direct Examination.

Q. (By Mr. McRoberts) Mr. Carlton, in talking about this first conversation with Mr. Elliott you said then
1333 he began to get pretty hot about it; will you tell us specifically what he said and what you mean by that, and what he said.

A. I couldn't tell you exactly what he said. I don't remember exactly what he said.

Q. Give us the substance of it.

A. He said "God damn it, it is just like it has always been, you fellows never leave us alone; you are always screwing us up" and I tried to quiet him down a little by telling him that I didn't think we were trying to abuse him and we were not trying to push this off on them.

Q. Did he say anything more at that time that you can recall, Mr. Carlton?

A. No, nothing other than what I have already said.

Q. You said your attention had been called to Elliott's attitude toward his job before; will you tell us about that.

A. His foreman had told me several times that Bill was causing a lot of disturbance amongst the men by criticising changes that had been made and that all we were doing was just screwing him up, and that is Bill's own words, and he really felt—he told me he did—he really felt that the Company was trying to screw him all the time, and I asked him why he continued to work there, but he never would say.

Q. Who were the foremen who reported this to you, Mr. Carlton? Do you remember their names?

1334 A. Mr. Terry, and that was his immediate superior, had talked to me previous to this, and Mr. Gerding had talked to me about his actions, and, of course, Mr. Gerding is in charge of the department on the day shift, and I took it over at night.

Q. Had you discussed Mr. Elliott with Mr. Day before the 23rd of July?

A. No, I had not.

Q. That was the first time you discussed him with Mr. Day?

A. That is right.

Mr. McRoberts: I think that is all.

Recross Examination.

Q. (By Mr. Evans) When was it you had a conversation with Mr. Terry?

A. Before the matter of the change of hours; I don't remember the exact date.

Q. About when?

A. I would say about two weeks or so previous to this.

Q. What change was Elliott objecting to at that time, if any?

A. I can't recall that change exactly. We had made a change, I believe, in the hours someway of working. I don't know for sure what that change was. I don't remember that.

Q. You mean this was the second change of hours within two weeks?

A. No, not within two weeks.

1335 Q. You said this conversation took place within about two weeks before that?

A. I know, but he was talking about the actions Elliott had taken on a change previous to this.

Q. How long before?

A. I don't know that.

Q. When had you talked to Gerding?

A. I don't know the exact date I had talked to Gerding.

Q. About when?

A. I would say a couple of days before this first conversation with Elliott.

Q. What change was that about?

A. That wasn't about any particular change. That was just about the attitude Elliott was taking toward the management.

Q. On what shift did Elliott work during that period, on your shift or Gerding's shift?

A. At what time?

Q. This period just before his discharge?

A. During this period just before his discharge he was working under my shift.

Q. Then he was not working under Gerding?

A. He was working under Gerding. Gerding is superintendent and he works under him at all times.

Q. Except you have supervision at night?

1336 A. That is right.

Q. You had not reported anything to Gerding before that conversation with Elliott?

A. No, sir.

Q. So it wasn't anything you told him?

A. That is right.

Q. Terry was Elliott's immediate boss during this period?

A. That is right.

Q. For how long had he been Elliott's boss?

A. I couldn't say for sure. The foremen change shifts every six weeks; I don't know exactly how long Terry had been with this group. I think it was near the end of his six weeks period, though.

Q. Did Gerding give you instructions to find out what the men felt on the night shift about the hour changes?

A. That is right.

Q. What did Gerding say about that?

A. He said he had the schedule lined up and he wanted his foremen in the shop to take it around and see how the men felt about going on these schedules.

Q. Did you consult with the representatives of the independent union about this hour change?

A. I didn't, no, not myself. It was all taken care of to put the shift through Mr. Gerding's supervision.

Q. As far as the night shift was concerned you did
1337 not talk to the representatives of the independent union about it?

A. No, sir, I didn't talk to anyone about it.

Q. You told the foremen to go around and ask the men individually about it?

A. That is right.

Mr. Evans: That is all.

Mr. McRoberts: That is all.

Q. (By Trial Examiner Ruckel) I have one or two questions: What was the manner of taking this vote, you say, to see whether the employes wanted this change or not?

A. We had the foremen go around and ask each individual whether he was in favor of working the way they were working or working on this new schedule, and he had this new schedule with him, and they were already acquainted with it from being posted before for their approval, and he was just getting their vote on it and having their answers yes or no, they were in favor or against it.

Q. What was the result?

A. The result was they changed to the new schedule.

Q. The majority of the employes voted for the change, did they?

A. That is right.

Q. Was that vote all taken on the same day you talked to Elliott, or over a period of a few days?

1338 A. It was over a period of a few days, but very few; I don't know exactly when.

Q. Do you know when the poll on the vote of the employes was completed?

A. No, I could say about. I think it was about the 23rd,

and I think they finished it up the next day, and I think that was the last shift I had, but I don't know for sure.

Q. When did it go into effect?

A. I don't know that date, either.

Q. Shortly after?

A. Shortly afterwards.

* * * * * * *

1374 WILLIAM GRUNNER,

a witness called by and on behalf of the Respondent herein, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. McRoberts) Will you state your name, please?

A. William Grunner.

Q. And where do you live?

A. 430 Broadway, East Alton.

Q. Where are you employed?

A. Western Cartridge Company.

Q. How long have you been with the Company?

A. Twenty years, this last May. I have been there longer than that.

Q. Mr. Grunner, do you know William Elliott?

1375 A. Yes sir.

Q. Did you have any controversy with William Elliott in May, 1941?

A. Yes sir.

Q. What was your position at that time?

A. I was a caster.

Q. Doing the same work that Elliott was doing?

A. Yes sir.

Q. Tell us just what happened at that time, Mr. Grunner?

A. Well, at that time the way this all came up was over the independent union. Elliott was one of the representatives—shift representative, and each shift had a representative, and they had been having their meetings; so I don't know what was the reason, but Bill had come in one night, when he came to work he told two or three of

us fellows that were standing around together "You fellows will have to get another representative; I am not going to be any more."

Q. Let me interrupt: Were those two or three other fellows that you mentioned Baker and Darr and Claypool?

A. There was Baker, and I don't remember whether Claypool heard that or not, and Darr—I think Darr did, too.

Q. Go ahead and tell us, Mr. Grunner, what happened?

A. There wasn't anything more said, and we did not say anything at that time, and later I asked him—there
1376 was four of us, and I remember this better than I do the rest, because myself and Darr and Claypool and Elliott happened to be in the bunch grouped together, and I asked him, I said "Bill, aren't you going to take that representative job any more?" I said "If you don't want it, I will take it" and he said "All right, go ahead and take it; I don't want it". I said "If it is all right with the other follows"; so I asked two or three fellows, and I asked those fellows there that heard it, and it was all right with them and some of the others that happened to be around, and I thought no more about it until an hour or so later Elliott came around and crawled on me about it.

Q. What did he say?

A. He began raving about it and said "What do you guys want up here?"

Q. You say he was raving. Try to give his exact words, and tell us exactly what he did say and how he said it?

A. He said "What do you want? I am going to step out of office tomorrow morning? What do you want, more money, or do you want my job, or what do you want?" and I told him "No, I don't want your job or anybody else's, only the one I have got" and he accused me of being a suck.

Q. He accused you—what did he say?

A. He said I was sucking for a better job. That is what he said.

1377 Q. What else was said?

A. He kept on, and he told me—he threatened me, he said "I will whip you, and I can do it, too."

Q. Tell us what happened? What was the end of the conversation? What did you say when he said he could whip you?

A. Of course, I took my own part; I said "All right, Bill, any time you feel like I will try to accommodate you." He kept on talking, and I was busy, and I was really working.

Q. Was this during working hours?

A. Yes, during working hours.

Q. What else happened?

A. I told him "Bill, go on back up there on your job; I don't want to argue with you," and he went on back to his furnace, and then he came back a second time.

Q. What did he say then?

A. He started to arguing again and he said "I have been around and I asked all of those fellows and they don't want you to be representative" and he said "I am just telling you and it will save you the agony of them having to tell you."

Q. What did you say?

A. I told him "All right; that is all right with me, I can take it. I have taken it before and I can take it again, and if they don't want to tell me that that is all right with me."

1378 Q. Did he say anything more at that time?

A. There was more said, but I just cannot remember.

Q. Did he ever swear at you in either of these conversations or at any other time?

A. Yes, there was swearing.

Q. What did he say? Did he call you any names?

A. He just said I was a damned fool or crazy, and things like that; I was damned dumb.

Q. Did he have anything to say about the Company and the management on those occasions, or any other occasions?

A. I don't remember at that time, but I have heard him on other occasions cuss the Company.

Q. What do you mean cuss the Company?

A. Telling about how damned cheap they were and how much money they had stole in bonus money, which they had stole.

Q. Did this happen on just one occasion or more than one occasion?

A. On more than one occasion.

Q. Pardon me?

A. On more than one occasion.

Q. Was anybody else present when he would say these things, or would they just be to you?

A. Earl Jones was present at this time we had this argument when he threatened me.

Q. I am talking about the times he talked about the
1379 Company stealing money from the men?

A. Yes; he used to talk about that in the washroom when there was a whole shift in there or fifteen or twenty men. When he would go in the washroom where all the gang was, if anybody would say anything to him about going to the office for him or trying to get something straightened out or working conditions or seniority, or one thing or another like that, he would say "Go on out, you damned bastards or sons-of-bitches, and do your own talking, and I am not going to talk for you."

Q. Was that when he was representative?

A. That was when he was representative.

Q. Representing that shift?

A. Representing that shift.

Q. And these would be grievances they would want him to take up?

A. Yes sir.

Q. What would he say?

A. He would say "You sons-of-bitches, go out and do your own talking."

Q. Did he say why he wouldn't do it?

A. No, he didn't say why he wouldn't.

Q. Did he say whether it would do any good or what the Company would do about it, or anything about it?

A. He would say "They wouldn't do anything about
1380 it" or something like that. I don't know if he was just wisecracking or what. One particular time he said in there "You damned bastards need a smart man to take care of you," and that is what he said and the way he said it.

Q. Did he say who the smart man was?

A. We always took that for granted.

Q. Mr. Grunner, did you hear him say anything about this shift change or any controversy about that just before he was discharged?

A. Yes sir.

Q. What did he say about that?

A. They were starting a new schedule, working the new schedule, and he said the Company was doing it to save money, to keep from paying time and a half; that there wouldn't be as much time and a half paid as there was before on the old schedule.

Q. Did you hear him make any statement at the time Mr. F. W. Olin gave a large sum of money to Cornell University, or were you present at that time?

A. Yes, I heard that discussed or talked about, but I don't just remember—

Q. You do not remember what he may have said about it?

A. —whether he mentioned it.

Q. Was Earl Jones present when Elliott came over and threatened to whip you?

1381 A. Yes; he was not the whole time he was over there, but he walked up while we were talking and heard part of it.

Q. Did you tell Jones then what had taken place?

A. Yes, I told him.

Mr. McRoberts: That is all.

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1387 WILLIAM H. KEIL,

a witness, called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. McRoberts) Will you state your name, please?

A. William H. Keil.

Q. Where do you live, Mr. Keil?

A. East Alton.

Q. (By Trial Examiner Ruckel) How do you spell your name?

A. K-e-i-l.

Q. (By Mr. McRoberts) Where are you employed?

A. The Western.

Q. How long have you been with the Company?

A. Twenty-five years.

Q. What is your position with the Company?
A. Foreman.
Q. Of which department?
A. Casting shop.
Q. How long have you held that position?
A. About nine years.
Q. Mr. Keil, did you have William Elliott working under you?
A. At times.
Q. Had he been working on your shift up until just a day or so before he was discharged?
Mr. Evans: We object to the leading.
1388 Trial Examiner Ruckel: He may answer.
A. I don't remember two or three days before, no, sir.
Q. A few days before?
Trial Examiner Ruckel: He says he does not remember whether it was a few days before or not.
The Witness: No.
Q. Was it up until a short time before he was discharged?
Mr. Evans: I object. Leading.
Q. What is your best recollection as to how long before he was discharged it was when he went off of your shift?
A. Possibly two or three weeks.
Q. Two or three weeks?
A. Yes sir.
Q. Mr. Keil, what can you tell us and will you describe Mr. Elliott's attitude toward his work and toward the company and toward the management?
Mr. Evans: Objection. It calls for a conclusion.
Trial Examiner Ruckel: He may answer.
A. Elliott seemed to always go around and done quite a bit of talking with the men.
Mr. Evans: I move to strike it.
Q. Tell us just what you mean by that.
Trial Examiner Ruckel: It may stand. Be specific.
A. In regard to the Company's rules and regulations.
Q. What would he say about them?
1389 A. Well, he didn't think the Company was fair with him in regard to his pay and his bonus.
Mr. Evans: I move to strike the answer as conclusions.

Q. Do not state what he thought, but state what he said. What did he say about his pay and about the Company and what the Company did?

A. He said the Company owed him so much bonus and they had took it away from them.

Q. What term did he use in describing how they took it away from him? What did he say about it?

A. Just in plain words, they took it away from him.

Q. Did he state that on more than one occasion?

A. Yes. I heard him repeat that several times.

Q. To the men in the shop?

A. Yes sir.

Q. What other statements did he make about the Company and its management?

A. That is about all.

Q. Did you have anything to do with the question of this shift change?

A. No, I didn't.

Q. You did not have any contact with Elliott at that time?

A. No sir.

Q. When you said he did so much talking, where would this be? I mean in the shop or where?

1390 A. In the shop.

Q. During working hours?

A. Yes.

Q. To other men?

A. Yes.

Q. While they were on duty, too?

A. Yes.

Q. What would it do to his work and their work?

A. It would keep them off the job to a certain extent.

Q. Did you report these things to Mr. Day or anyone else?

A. Yes, sir.

Q. What did you tell them?

A. I told them practically the same as I have told you.

Q. Did you tell Mr. Day what you thought ought to be done with Mr. Elliott and make any recommendation?

Mr. Evans: I object, as leading.

Trial Examiner Ruckel: Sustained.

Q. What, if anything, did you say as to what should be done about the matter?

A. Nothing in particular.

Mr. McRoberts: Mark this as an exhibit, please.

(Said document was thereupon marked, for identification, "Respondent's Exhibit Number 16".)

Q. Mr. Keil, I will show you Respondent's Exhibit Number 16 and ask you if that is your signature to that quit slip?

1391 A. Yes, it is.

Q. Did you sign that on the day it bears, July 25th, 1941?

A. I don't remember whether it was on that day or the day after.

Q. Were you present at the time Elliott was discharged?

A. No sir.

Q. Do you know how your signature happens to appear on this quit slip?

A. Well, usually after a man is discharged, they are working for four foremen and the handiest man there signs it.

Q. You were just the handiest foreman there?

A. Yes sir.

Q. Does the statement on there above your signature correctly state Mr. Elliott's attitude, to the best of your knowledge and belief?

A. Yes sir.

Mr. Evans: Objection.

Trial Examiner Ruckel: The answer may stand.

Mr. Evans: I move to strike it. No foundation for the question.

Trial Examiner Ruckel: It may stand.

Mr. McRoberts: I think that is all.

Mr. Evans: Are you offering that exhibit?

Mr. McRoberts: I will offer it in evidence. I offer in evidence Respondent's exhibit 16.

1392 Mr. Evans: May I see it?

Mr. McRoberts: Yes.

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1418 GLENN CLAYPOOL,

a witness, called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. McRoberts) Will you state your name, please?

A. Glenn Claypool.

Q. Where do you live, Mr. Claypool?

A. East Alton.

Q. Where are you employed?

A. Western Cartridge Company.

Q. How long have you been with the Company?

A. Thirteen years.

Q. What kind of work do you do there?

A. Metal caster.

Q. How long have you been a metal caster?

A. Approximately ten years.

Q. Did you work in the same building or department that William Elliott worked in?

A. Yes sir.

Q. And you knew William Elliott?

A. Yes sir.

Q. Mr. Claypool, do you recall a conversation between William Elliott and William Grunner about Elliott withdrawing as representative of the independent union and Grunner taking his place, or anything to that effect?

1419 A. Yes, I remember the squabble all right; the particulars I don't know.

Q. You just remember a squabble?

A. I remember that.

Q. Can you tell us just what you do remember about the incident?

A. Well, I don't know, Elliott wanted to give up the job as being representative of the union and Grunner told him if he didn't want it then he would take, if the boys wanted him to, and I don't know—Elliott didn't like the idea at all.

Q. What did he say about that, do you remember?

A. I just can't recall the exact words.

Q. Just the substance of it? How did he indicate he did not like the idea?

A. He just indicated he thought it ought to be done away with altogether.

Q. (By Trial Examiner Ruckel) What done away with?

Q. (By Mr. McRoberts) There should not be a representative, is that what you mean?

A. Yes sir.

Q. There should not be anybody as representative?

A. That is the way I took it.

Q. Why did you understand that? Why he thought there should be no representative at all? Did he say that?

A. I just could not say. He said so much.

1420 Q. What do you mean when you say he said so much?

Mr. Evans: I object to that.

Trial Examiner Ruckel: Objection sustained.

Mr. McRoberts: Objection sustained to my question? He said he said so much, and I ask what he means by that statement, to state what he means. Is there an objection to that?

Mr. Evans: Yes.

Trial Examiner Ruckel: Objection sustained.

Mr. McRoberts: My question is what he means when he says Elliott said so much.

Trial Examiner Ruckel: Yes, I know, and that is what the objection was to. What did he say at this time? We are not interested in what he may have said some other time.

The Witness: I just cannot recall it.

Q. Tell me generally about Elliott, in his attitude toward the Company and the supervisors, as you noticed it? Describe what you saw?

Mr. Evans: Objection. It is general and calls for a conclusion.

Trial Examiner Ruckel: He may answer, but specifically tell us when, where and what was said, and so on.

A. I can't do that.

Q. Pardon?

A. I couldn't do that particularly.

1421 Q. Do it the best you can.

Mr. Evans: I object. He has already stated he could not give any particulars.

Trial Examiner Ruckel: He may be able to as it comes to

his mind. He may answer, but I will entertain a motion to strike, if it appears the answer is not proper.

A. It seems he appeared to be sore at the whole shebang, is the way I would put it.

Q. What did he say or do that made you feel Elliott was sore at the whole shebang? Was it things he said or things he did?

A. Yes, that is it, but I cannot—

Q. You cannot remember the specific words?

A. No.

Mr. Evans: I move to strike the testimony.

Trial Examiner Ruckel: You may inquire further, if you wish.

Q. Do you recall Elliott saying anything about the bonus system?

A. Yes sir.

Q. What did he say about that, and the discontinuance of the bonus?

A. I heard him say that the Company stole the men's money.

Q. Did he say that on more than one occasion?

A. Yes sir.

1422 Q. On a number of occasions?

A. A number.

Q. What did Elliott have to say about taking up any grievances with the Company that the men might have? Did you hear him say anything about that? I mean whether they should be taken up or whether he would take them up or somebody else should take them up, or whether anybody should take them up?

A. I heard him say it would not do any good to take them up.

Q. Did he say why it would not do any good to take them up?

A. No.

Q. Were you present at any later conversation between Grunner and Elliott following this first about which we have talked?

A. I can't recall if I was.

Q. Were you present at any time when Elliott threatened to whip Grunner, or anybody else—

Mr. Evans: We object to the question.

Trial Examiner Ruckel: He may answer, if he recalls.

Q. Go right ahead, Mr. Claypool?

A. No, I cannot.

Q. You do not recall anything of that sort?

A. No.

Mr. McRoberts: I think that is all.

Cross-Examination.

Q. (By Mr. Evans) This business about the bonus,
1423 was that several years ago?

Mr. McRoberts: You mean when Elliott commented on it?

A. Let's see. Just a moment. I would say a year ago. Approximately a year ago.

Q. That you heard Elliott make some such remark that you testified about?

A. Yes.

Q. Did you report that to the boss?

A. No, but he made one of those statements before the boss; that is the superintendent.

Q. That was over a year ago?

A. No. Approximately it might have been a year ago.

Q. What do you mean by that?

A. Let's see. I can't think—

Q. You mean it might have been eleven months ago?

A. Six or seven or eight months ago. I really believe it was last spring, along about March or April. I could find out.

Q. (By Mr. McRoberts) How can you fix the date, if you can fix it?

A. The representatives of our shift held a meeting that day.

Q. (By Mr. Evans) Were you a representative?

A. No.

Q. (By Trial Examiner Ruckel) Held a meeting where?

A. In the cast shop. That is, just talked among ourselves.

1424 Q. (By Mr. Evans) Were you at the meeting?

A. Yes sir.

Q. Was Elliott at the meeting?

A. Yes sir.

Q. Was it a meeting of the independent union for the cast shop?

A. No, this was trying to get—I am pretty sure it was to try to agree on a wage raise.

Q. Was that some kind of a petition the man had signed for an increase in pay?

A. No, I don't remember exactly.

Mr. Evans: That is all.

Q. (By Trial Examiner Ruckel) You said a while ago that Elliott thought it should be done away with; did you understand him to refer to the independent union or to the job of representative from the department, or what was it you understood him to mean?

A. I couldn't hardly say. I took it to be the independent union.

Q. To do away with the independent union?

A. Yes sir.

Trial Examiner Ruckel: Any re-direct examination?

Mr. McRoberts: Yes, Mr. Examiner.

Re-direct Examination.

Q. (By Mr. McRoberts) Mr. Claypool, was this at the
1425 time that Grunner said he would take the job of being the representative?

A. Just about the time. It wouldn't miss two weeks either way.

Q. (By Trial Examiner Ruckel) There were two occasions, were there?

Q. (By Mr. McRoberts) Was it a different conversation or the same one?

A. A different one.

Q. A different conversation?

A. Yes sir.

Q. Will you tell us, as nearly as you can, what Elliott said at that time?

A. About the bonus?

Q. No, about doing away with it? Can you tell us what he had been talking about and what the other men were talking about, and what was said, and how it came up?

A. Well, I don't believe I can.

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1461 THOMAS WORTZ,

a witness called by and on behalf of the Respondent herein, having been previously sworn, was examined and testified as follows:

Direct Examination.

* * * * * * *

1462 Q. Up to May 20th, and while you had anything to do with the smokeless powder division, was there
1463 any rule prohibiting union activities or conversation on union matters in force over there?

A. No, sir, none whatever.

Q. Was there any restriction upon the employees' activity in union matters or any limitation as to how far they might go?

A. Not at that time, or any time during this controversy.

Q. Suppose it interfered with the job?

A. That is a different thing entirely. If they did not attend to their work that was a different offense entirely. I did not make that statement with the intention of saying union activity is an offense, and it is not.

Q. But so long as it did not interfere with the job you did not undertake to prohibit it?

A. Not in any way.

* * * * * * *

1465 Q. What I mean what were these supervisors and yourself disturbed about and what was it you feared might happen?

A. We were afraid some of these men might make a mistake with some of the chemicals they were using and blow the plant to pieces and destroy property.

Q. You have, of course, a safety department over there?

A. That is right.

Q. And certain safety rules and regulations?

A. That is correct.

Q. Do you have any special rules with respect to the handling of explosives and the men who are working over there in the smokeless powder division? I am referring, Mr. Wortz, to efforts that are made to eliminate anything

that will disturb the men's minds,—domestic difficulties, for examples, and all?

A. That is correct.

Q. Tell us about that?

A. One of the rules of the Company—this rule was made before I entered their employ—that when a man has domestic trouble or sickness at home, or things like that, that will disturb his working capacity, if it is shown it is doing that we have authority to give that man time off to clear up his different problems.

1466 Q. Why is it that you do that over in the smokeless powder division when you do not do it any other place?

A. Because the manufacture of explosives is a far more dangerous business.

Q. What about the condition with respect to discipline by May 1941 over in the smokeless powder division?

A. In fact we had very little just at that time.

Q. Why.

A. We reached the point where disciplining a man for any infraction of the rules, in many instances it was termed an unfair labor practice and charges would be filed against us, and we discontinued as much of it as we possibly could to avoid that condition.

* * * * * * *

1474 Q. Mr. Wortz, following that occurrence on May 22nd what developed with respect to the problem of discipline over in the smokeless powder division?

A. It deteriorated rapidly all summer and to avoid Labor Board cases we overlooked many things that were really dangerous and it reached the point where the supervision itself had complained about the conditions.

Mr. Evans: I move to strike the conclusion of the witness.

Trial Examiner Ruckel: It may stand.

Q. By supervision itself you mean supervisors and foremen?

A. The supervisors and assistant superintendents and some of the line foremen and the safety men over there.

Q. In the smokeless powder division?

A. That is correct.

Q. What did they finally do about it?

A. We held a meeting in my office, at their request—

1475 some of those men—and they informed me unless conditions were improved they were not inclined to be working in there and risking their lives under those conditions.

Q. Did you make a report to Mr. Schotters as a result of that matter?

A. As a result of that meeting a report was written and signed by all of those that had made the complaints.

Mr. McRoberts: Mark this.

(Said document was thereupon marked, for identification, "Respondent's Exhibit No. 23.")

Q. I show you Respondent's Exhibit Number 23 and ask you if that is the report or memorandum to which you refer?

A. That is the letter, yes.

Q. Was that signed by the different men whose typewritten signatures appear on the second page of it?

A. That is correct.

Q. And it was sent to Mr. Schotters?

A. Yes.

A. For Fred Allison, who is technical director; Mr. T. M. Olin, Vice-President; Gordon Newcombe, he has no particular title, he is in the technical division, I think in an advisory capacity to Mr. Olin in that respect.

Q. Mr. Fred Allison is Dr. Allison in charge of technical and experimental work over there?

A. That is correct.

1476 Mr. McRoberts: We offer in evidence the Respondent's Exhibit number 23, Mr. Examiner.

Trial Examiner Ruckel: I suggest that might be examined later, Mr. Evans, so we can proceed.

Mr. Evans: Very well.

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1480 Mr. McRoberts: Mr. Ellis McPherson, pages 640 and 641 of the transcript. "What was said at that time? (Answer) He sent for me to come in, and I went in his office and he told me that all of the men was mad at me, and some of them didn't want to work with me, and he asked what I thought he ought to do with a man like that.

"Q. This was still while you were an hourly foreman?

"A. Yes, it was. So I told him, I says 'I didn't know that anyone was mad at me' and he knew what he could do with me. So then he begin on me. I had the A F of L button on. He said 'I can't tell you not to belong,' and he pointed at the button, 'and I can't tell you how to vote.' And he told me about the Labor Board had granted a hearing for the A F of L, and it was just a few days
1481 before that hearing.

"And he told me that the job I was on also paid more than I was getting, and if I would go along with him and the Company, he would get me a raise right away, and then later on he would get me to the top of the bracket, and also during the summer we would get beer and get out and have a party and have a good time.

"And he told me he would like to talk to all the men on the line. He said 'Go back out there and tell them' that he would like to talk to them, and probably would." Did you have any conversation with Mr. McPherson, and if so, will you tell us your recollection of what was said?

A. I had a conversation with him at the time he had trouble over ruining some powder through negligence—

Mr. Evans: I move to strike the conclusion of the witness.

Trial Examiner Ruckel: It may be stricken.

Q. Had he ruined some powder?

A. Yes; eleven hundred pounds.

Mr. Evans: I move to strike the conclusion of the witness.

Q. (By Trial Examiner Ruckel) Was that the occasion for the conversation?

A. Yes, sir.

Q. The report that he had ruined some powder?

1482 A. Yes, sir.

Trial Examiner Ruckel: It may stand, as preliminary.

Q. (By Mr. McRoberts) Tell us what the conversation was.

A. The conversation I had with McPherson was nothing along those lines whatever that you have just read.

Mr. Evans: I move to strike the conclusion of the witness.

Trial Examiner Ruckel: Just state what was said.

A. I do not recall entirely what was said. Just a moment, until I think it over.

Q. The only thing I am concerned about for the moment

is any discussion of union matters; did you discuss union matters with Mr. McPherson?

A. No.

Q. Did you bring it up or did he mention it?

A. The union was never brought up while he was in the office in any way.

Q. (By Trial Examiner Ruckel) What was this election that was going to come off?

A. When was the election?

Mr. Evans: May 26th.

Mr. McRoberts: The record shows May 26th.

A. I presume that is what he was referring to, but he and I didn't discuss it. I would not have discussed anything like that with him.

Mr. Evans: I move to strike the conclusion of the
1483 witness.

Trial Examiner Ruckel: It may be stricken.

Q. (By Mr. McRoberts) Mr. Wortz, Mr. William Gent, Jr., testified that on one particular time he—you had talked with him about wearing a button—

Trial Examiner Ruckel: Who was this witness?

Q. Mr. William Gent, Jr., and he said that you said that you said it was not a very good idea for a foreman to wear a union badge. Did you have such a conversation with Mr. Gent, and if so, please tell us what was said.

A. I had several conversations with him. He became an object of pity in the plant, trying to carry water on both shoulders, trying to come to us and going to the union.

Mr. Evans: I move to strike the conclusions of the witness.

Trial Examiner Ruckel: It may stand.

Q. Just describe what took place at these conversations about foremen wearing a badge.

A. I never said anything to him about wearing a union badge. In the first place, I would not have said it to him because it was common knowledge he had his badge under the sun shield in his car. I had been told that.

Mr. Evans: I move to strike the conclusion of the witness, as hearsay.

Trial Examiner Ruckel: It may be stricken:

1484 Q. Did he wear a union badge around the shop?

A. I don't think he had the nerve. No.

Mr. Evans: I move to strike the conclusion of the witness.

Q. He did not wear it in any event so far as you know?

A. No, I never saw a union badge on him.

Mr. Evans: I move to strike the conclusion of the witness.

Trial Examiner Ruckel: It may be stricken.

Mr. McRoberts: The conclusion he did not wear it?

Trial Examiner Ruckel: No, the previous question.

Mr. Evans: The previous question.

Q. A lot of men were wearing union badges around there, weren't they?

A. Yes. I seen a hundred.

Q. Did you ever say to any of them they should not wear their union badges?

A. Positively not.

Q. William Gent or anybody else?

A. No, I never told anybody not to wear a badge.

Q. William Gent Jr. also testified that in another conversation you asked him to get the names of the employes who would be willing to stay in on a strike, if the place went on strike. Do you recall any such conversation as that with Mr. Gent?

A. I cannot recall holding any such conversation
1485 with him, no sir. He would probably be the last one I would have held such a conversation with.

Mr. Evans: I move to strike it.

Trial Examiner Ruckel: It may be stricken.

Mr. Evans: The witness seems to be particularly anxious to get in all kinds of remarks and conclusions which are not responsive, and I ask the Trial Examiner to instruct the witness to cease his tactics on the witness stand.

Mr. McRoberts: If you will just answer the questions, Mr. Wortz—

Trial Examiner Ruckel: Omitting argumentative remarks that you would or would not. The question is whether you did or did not.

Q. Mr. Wortz, Mr. William Gent, Jr., the same man, also testified that you asked him to sign a withdrawal from the A F of L office, that this took place in your office.

Trial Examiner Ruckel: Who is this witness?

Mr. McRoberts: The same witness, Mr. Gent. That is page 342, and as I recall he testified that he signed such a document. Did you ever ask William Gent, Jr., to sign a paper withdrawing from the A F of L union?

A. No, I didn't ask him to sign one, but I found one on the floor of my office, shoved under the door, with his name on it, and I have it on file over there.

Q. Did you ever have any conversation with him
1486 about withdrawing from the A F of L union?

A. Not that I can recall, no.

Q. When you found this paper did you do anything with it?

A. I put it on file for future reference, in case—I suspected—that is probably wrong.

Mr. Evans: I move to strike it.

Q. Did you put it on file?

A. I put it on file, yes.

Q. Did you send it in to the union?

A. No, I am not interested in their personnel—no.

Mr. Evans: I move to strike it.

Trial Examiner Ruckel: It may be stricken.

The Witness: I am sorry.

* * * * * * *

1491 Did you have any conversation with Mr. Bunzy following his return, and if so, what is your recollection of it?

A. Yes. I was driving in the plant after this meeting, things were so unsettled there—

Mr. Evans: I move to strike it.

Trial Examiner Ruckel: It may be stricken.

1492 A. I passed Bunzy on the road going to my office, and I said "Step in a while, I want to see you." As near as I can recall the conversation that took place, I asked Bunzy as head of the union to try and eliminate agitation in the plant, that it was dangerous to the Company's property and to the people working there, and we had a little further conversation, as I recall it, and I do recall we had a conversation relative to him going to school.

In the course of our conversation he said he wanted to get ahead. I said "Why don't you avail yourself of our lending library here? We have bought—" Is it permissible to state this?

Trial Examiner Ruckel: Give it names.

A. Our lending library here, and in addition to that we are giving free scholarships on certain subjects to anyone

who wants them. At the time that discussion took place about that I clearly indicated to Bunzy it had no official capacity to the union, and he agreed this was a personal discussion about that particular part, his well being, and he further agreed he would not discuss it with anyone other than me about that We had sent one man to Washington University, and we had bought quite a library of books to lend; however, this was a new plant, and we were organizing it, and in addition to that we anticipated sending to Shurtleff College, which was done this year.

1493 That is what was said to Mr. Bunzy. He stated he had very little education, if he started to do any studying; so I suggested he see Pete Brown, and Pete has done that with many other employes there, now and in the past, and in fact he taught this broad foremanship class at Shurtleff College, on my suggestion, this last summer; and that is about the gist of the conversation between Mr. Bunzy and I.

Q. Did you have any conversation with him in which you made derogatory remarks about the union and the people running it, and dues, and so forth, along the lines that have been testified to?

A. I don't recall anything of that nature.

Q. What instructions have you been given by your superior officers about union activities and what you should do and not do about them?

A. Will you state the question again, and I didn't get the first part of it?

Q. Let me reverse it: What instructions had you been given by your superior officers with respect to union matters and participating in union matters, or any of them?

A. I had been instructed by Mr. Schotters and Mr. John Olin not to interfere in it at all and to keep myself clear of any discussion or arguments with the men about it.

Q. Was that when you took the position over here as superintendent or before or after, or when was that?

1494 A. Shortly after I was appointed superintendent.

* * * * * * *

1501 Q. Did you receive any withdrawals from any other employes than Gent concerning the A. F. of L.?

A. No, I didn't receive one from Gent, only the way I described it in my testimony this morning.

Q. You did not receive any from anybody else?
A. I did not receive any at all.
Q. Or talk to anyone else about it?
A. I did not discuss withdrawing from the union or ask anybody to do it. There was several I had a conversation with and I told them that was a matter they would have to settle themselves and I could not express any interest in what they did.

* * * * * * *

1503 Q. (By Mr. McRoberts) Mr. Wortz, did you have conversations with various men who asked you what they should do about joining or refusing to join the union?
A. On numerous occasions men came into my office and asked me what they should do about it.
Q. What did you tell them?
A. I told them I could not advise them in any way what to do; that they would have to decide that question themselves.

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1560 WILLIAM A. STEVENS,

called as a witness by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. McRoberts) Mr. Stevens, will you state your name, please?
A. William A. Stevens.
Q. Where do you live, Mr. Stevens?
A. 2615 Waterby Avenue, Alton.
Q. Where are you employed?
A. I am not employed.
Q. You are retired?
A. Yes sir.
Q. Mr. Stevens, were you formerly employed by the Western Cartridge Company?
A. I was.
Q. In what capacity?
A. Foreman.
Q. In what department?
A. Finish.

Q. That is the finish department of the brass mill?
A. Yes sir.

* * * * * * *

1563 Cross-Examination.

Q. (By Mr. Evans) Did you have anything to do with getting employes to sign those individual contracts or advising them as to whether to sign or not to sign?
A. Yes, I did.
Q. What was your advice to them?
A. There wasn't much advice to it. I tried to impress on them it was a benefit to the employe to enter into that. There was no pressure whatever put on that.
Mr. Evans: I move to strike the conclusion of the witness.
Trial Examiner Ruckel: This is what he told the employes. It may stand.
1564 Q. When did this individual contract business begin?
A. I am not sure of the date. I imagine it may have been about two years before I quit, or a year and a half, something like that; I don't know the date.
Q. Did you talk to each of the employes in your department about the individual contract at the time they came out?
A. The way we did that they came up in the office at different intervals.
Q. Each individual employe was called?
A. No, sir, numbers was called and that took in the brass mill.
Q. You interviewed the employes?
A. Yes.
Q. What did you tell them?
A. I just explained the merits of the contract.
Q. Just tell us what you told the employes?
A. I would have to have a contract to go over that; it is quite some time; I don't remember the wording of the contract. I know the employes put aside a certain amount, which was matched in some way by the Company, and at the end of the year that built up to quite a substantial figure, and they were privileged to borrow on that for different things.

Q. What else did you say to the employes about the contract?

A. The only thing I said about the contract I explained the merits of the contract as it was written.

1565 Q. And asked them to sign?

A. Why, yes, if they wanted to sign.

Q. Did you tell them it was all right if they did not sign?

A. Absolutely.

Q. Did you explain to the employes anything about the effect of a strike on the contract?

A. I don't remember of any provision in there regarding a strike.

Q. Did these contracts come out shortly after a strike that took place in the plant?

A. I could not answer whether that was prior to that or afterwards.

Q. There was a strike at the plant?

A. There was a strike there, but there wasn't many in the mill involved in it; very few.

Q. That was A F of L?

A. Not A F of L.

Q. No union involved?

A. No, there wasn't, to my knowledge.

Q. Just an organized strike?

A. As far as I know.

Q. Did the same thing occur at the expiration of the contract period, that is, employes were called into the office and asked to sign again individual contracts?

A. I didn't have any part in that.

1566 Q. You just started out the original contract?

A. I just started out the individual contracts.

* * * * * * *

1572 Q. Did you ever have anything to do with obtaining individual contracts?

A. Well, yes, some, but not in recent years.

Q. When the contracts first came out?

A. Yes, when the contracts first were presented to the employes. That has been some few years ago.

Q. That was back in 1933 or 1934?

A. I would say back about that time.

Q. Did you explain to the employes the contract?

A. My position was a little bit like Mr. Stevens was a while ago; naturally there was a lot of people that wanted to know and get all the information they could about the contracts, and about what they could expect, and it was our duty, of course, to go into details with different
1573 employes.

Q. Were the employes called into the office?

A. Well, yes, the employes were notified to come to the office when they wanted to get information. They would come into the office to get that information.

Q. Were they called into the office by foremen like you?

A. I didn't call any of them into the office.

Q. Did you explain the contract to any of the employes in the office?

A. Yes sir.

Q. How many employes did you explain it to in the office, approximately?

A. Well, I would say probably fifty or more.

Q. Did you explain to the employes the effect of a strike on the contract?

A. No. To my recollection—it has been quite a while, you know, and there has been a lot of water gone over the dam since then, and naturally I can't remember everything that was in those contracts and what we really did say, but it is my recollection there was nothing in the contract at all pertaining to strikes, and I might be wrong, but that is my recollection.

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1581 WILLIAM ROBERTSON,

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. McRoberts) Will you state your name, please?

A. William Robertson.

Q. Where do you live, Mr. Robertson?

A. 2214 North Rogers, Alton, Illinois.

Q. Where are you employed?

A. Western Cartridge Company.

Q. Western Cartridge Company?

A. Yes, sir; in the plant department.

Q. What position do you hold?

A. Foreman of the steamfitters and plumbers.

Q. How long have you held that position?

A. About nine years; something like that; I am not quite sure of the exact date; something of that sort.

Q. Did Francis Bunzy work under you?

A. He did at one time.

Q. Did he work under you in 1937?

A. I am not exactly sure of the date, but about that time he did.

Q. Mr. Robertson, Mr. Bunzy has testified in this case, to this effect, page 183, "Did you ever have any discussion with him"—by him was meant Bill Robertson, your-
1582 self. "Did you ever have any discussion with him concerning the independent union?

"A. I made the remark that it didn't amount to anything, and he told me that—I said 'We ought to have an outside union if we are going to do anything,' and he said 'Well, you would get farther with the Company with an independent union.'" Did you have such a conversation with Bunzy?

A. Not to my knowledge; I don't remember anything like that.

Q. Did you ever tell Mr. Bunzy in 1937, or any other time, that he or the employes would get further with an independent union?

A. I don't ever recall anything like that, and I am pretty sure not.

Q. Mr. Robertson, did you ever discuss union matters with employes?

A. No.

Q. Did you ever advise the employes under you as to which union they should join or refrain from joining?

A. No.

Q. Did you ever express any preference as to whether they should join any union or no union?

A. I never discussed union with them.

Q. Did you ever receive any instructions from your superior officers as to what position you should take on union matters?

1583 A. I don't remember I ever received any definite instructions as to that.

Mr. McRoberts: I think that is all.

Cross-Examination.

Q. (By Mr. Evans) You say you have been foreman there for about nine years?

A. About nine years; something pretty near to that.

Q. You are a part of the plant department, is that it?

A. Yes, I am over the plant department.

Q. Were you under Mr. Sauls?

A. No.

Q. Were you on the Western side?

A. Yes.

Q. You never were in the smokeless powder division?

A. I never was in the smokeless powder division; I have done a lot of work in the smokeless powder division, but never in no way connected with it.

Q. Did you do any work in the smokeless powder division side in 1937?

A. I would naturally think I did—that is small jobs.

Q. You mean off and on?

A. Off and on; small jobs.

Q. Was the independent union organizing in 1937?

A. I don't know; approximately along that time; somewhere in there.

1584 Q. You knew that from hearing employes talk about it?

A. I never heard but very little talk about it. I didn't encourage any talk about it.

Q. Is that where you did hear about it?

A. Yes sir.

Q. From the employes?

A. Yes sir.

Q. In other words, the matter was not discussed in any foremen's meetings or any meetings of higher officials?

A. No, not that I recall.

Q. How many employes did you have under your supervision in 1937, approximately?

A. About 25.

Q. Do you work along with employes?
A. No.
Q. Just supervise?
A. Just supervise.
Q. Did the employes ever talk to you about unions?
A. No, I never encouraged about that; I heard them talking amonst themselves, but that is all.

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1601 A. W. HORN,

called as a witness by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. McRoberts) Will you state your name, please?
A. A. W. Horn.
Q. Where do you live, Mr. Horn?
A. Alton.
Q. Where are you employed?
A. The Western Cartridge Company.
Q. What is your position?
A. Plant accountant.
Q. How long have you held that position?
A. About six years.
Q. Mr. Horn, are you familiar with the wage assignment blanks which the Company uses?
A. Yes sir.
Q. What is the practice of the Company with respect to those wage assignment blanks and the furnishing of them to employes?
A. It is the practice of the Company to furnish the blanks to the employes, due to the fact that the state law requires—
Q. Before we go into that, it is the practice?
A. It is the practice, yes sir.
1602 Mr. Evans: I move to strike the reference to the state law.
Mr. McRoberts: It may be stricken.
Trial Examiner Ruckel: It was incomplete. Yes.

Q. Mr. Horn, in furnishing those blanks to whom are they furnished?

A. They are furnished to the employes and to the cafeteria operator and various other groups who use the blanks, and the independent union uses them.

Q. The Company purchases those in large quantities?

A. Yes sir.

Q. Do you charge anybody anything you furnish those blanks to?

A. No.

Q. You speak of the cafeteria; is that the plant cafeteria?

A. Yes sir.

Q. Where the maintenance and production employes are served?

A. Yes sir.

Q. That is operated by independent operators?

A. That is right.

Q. And occasionally employes wish to make wage assignments for purchases through that cafeteria?

A. Yes sir.

Q. And a supply of these blanks is furnished to the operator of the cafeteria?

A. Yes sir.

1603 Q. How about the Credit Union, Mr. Horn?

A. The Credit Union is supplied with forms of wages assignments for deductions.

Q. The Credit Union is the ordinary type of Credit Union run by employes, is that correct?

A. Yes sir.

Q. Do you furnish these wage assignments at the skeet field?

A. Yes sir.

Q. The Company maintains a skeet field where employes are permitted to shoot and wage assignments are used there for the purchase of arms and ammunition, is that correct?

A. Yes sir.

Q. And if employes wish to use wage assignments for other purposes on limited occasions are they permitted to do so, or do you furnish them these blanks?

A. Yes sir.

Q. Do you furnish them for the independent union?

A. Yes sir.

Q. Do you make the independent union any charge for those blanks?

A. No.

Q. Or anyone else any charge for them?

A. No.

Q. Mr. Horn, what is the reason for the Company using this particular form of wage assignment—a uniform form?

1604 A. The form is gotten up to meet the requirements of the State law.

Q. That is the State law of Illinois?

A. State law of Illinois.

Q. Do you have a copy of that law, or the provisions of that law, or a memorandum of it?

A. I have it in my other coat pocket.

Q. I will get it later. This law prescribes the kind and type of printing that wage assignments have to bear if they are to be honored by the Company, is that correct?

Mr. Evans: I think the law speaks for itself.

Trial Examiner Ruckel: Is there any importance attached to the exact wording of this assignment?

Mr. McRoberts: This law prescribes the kind and type of printing, and if you do not comply with the thing we will have all sorts of assignments being presented to us, and we would have to determine whether they comply with the law and turn some of them back.

Trial Examiner Ruckel: I mean is it of any importance so far as this lawsuit is concerned?

Mr. McRoberts: It is contended because we furnished them with some blanks we discriminated.

Trial Examiner Ruckel: I mean the wording of the blank.

Mr. McRoberts: The point is the reason the Company is furnishing them blanks, and we are not doing it

1605 to favor them, but to avoid trouble and annoyance for ourselves.

Trial Examiner Ruckel: I thought you were going to show the wording required.

Mr. McRoberts: No.

Q. In any event, Mr. Horn, what is the reason the Company prefers to furnish its own wage assignment forms?

A. For ease of handling in the payroll department, because of uniformity. We have had considerable trouble in getting blanks that do not meet State law requirements, and this form has been gotten up in conformity with the State law, and we furnish it to the various people that care to use them for that very purpose.

Q. For whose convenience?

A. For our convenience.

* * * * * * *

1606 S. R. IRISH,

a witness called by and on behalf of the Respondent, having been previously sworn, was recalled and testified as follows:

Direct Examination.

Q. (By Mr. McRoberts) Mr. Irish, Mr. Chapman testified, on page 426, that when representatives of the independent union attended joint meetings with representatives of the Company, that the representatives of the independent union were paid for the time they lost from their work, if the meeting was held at a time when the men were supposed to be working. He further testified that if a meeting was held at 3 o'clock in the afternoon and the men were due to have worked until 4, they would be paid for that hour, but for the rest of the meeting thereafter they would not be paid. I will ask you what practice the Company has followed in its dealings with representatives of the Chemical Workers Union with respect to paying for time lost during such meetings?

1607 A. All meetings with the Chemical Workers Union committee have been carried on on Company property and the men have been paid at their regular rate on the basis of the punching of the time card, and if the meetings extended into overtime periods they were paid at overtime rates. Most of the meetings, however, were completed within regular hours.

Q. Will you explain what you mean by overtime rate? Suppose Mr. Bunzy, for example, was attending one of those meetings, and the meeting began at two o'clock in the afternoon and his shift would regularly be off at 4 o'clock that afternoon, and the meeting lasted until 6 o'clock that night, how would Mr. Bunzy be paid?

A. If his clock card was punched out at a later time the overtime would have to be approved, and if it was only a small amount it may have been cleared in the fashion of others just getting out of the plant. What I particularly had in mind was meetings that were held on Saturday, where the men would have worked at overtime rates beyond forty hours, and the meetings were held on that basis.

Q. As far as you know, is there any difference in the practice followed in the payment of time to the A F of L Chemical Workers Union representatives for attending meetings with Company representatives than that followed in paying representatives of the independent union

1608 in attending such meetings?

A. There is no difference at all. Both of them are paid on the basis of their regular schedules. I think in all cases the meetings with the Chemical Workers have been on their regular schedules, because three men are paid workers. On the independent union there are a number that are on shift rotations and so some of the times the meetings are called a portion of the representatives would be off duty and they did not get any pay for those meetings.

Q. If representatives of the independent union were working on the night shift and they attended a meeting in the daytime, they received no pay?

A. That is correct.

Q. Going back to the Chemical Workers Union, a considerable amount of time was spent during the month of August, 1941, I believe, in meetings between the Company representatives and union representatives with respect to reclassification of jobs and adjustment of wage brackets, and matters of that sort. The A. F. of L. union representatives were paid for their time while attending such meetings, were they?

A. Yes; and we included also any other employes that

were brought into the meeting to present any facts necessary for that negotiation.

Q. I take it by that you mean in addition to the reg-
1609 ular official representatives of the A F of L other members of the union were called in to these meetings from time to time for specific information about their specific jobs?

A. Yes. At one meeting I think we had four or five additional men who were on a sub-committee of some kind of the union who reviewed the part of the work as it applied to their particular section.

Q. And they were all paid for their time in attending such meetings?

A. Yes, in that case I believe there were a few who were brought in to one or two of these meetings that were on shift rotations and some of them came in on their own time. Whenever we called them off the job they were paid.

Q. In addition to those regular payments were there some special payments or compensation allowed to representatives of the Chemical Workers Union for time lost other than attending meetings with representatives of the Company?

A. There is only one I know of.

Q. What was that instance?

A. That was the last meeting in Washington where the Company and the representatives of the Chemical Workers Union appeared before the Defense Mediation Board, the three union representatives were allowed—

Q. Who were they?

A. Mr. Bunzy, Mr. Crossnoe and Mr. Otten were
1610 allowed the time away from the job—the time they would have worked had they not been at the meeting, which I believe was approximately 36 hours pay.

Q. Apiece?

A. Apiece.

Q. And they were paid for that time while attending the meeting in Washington before the Mediation Board?

A. That is correct.

Q. That was sometime in July of 1941, I believe?

A. No, I believe that was in September. It was just before the final signing of the amendment.

* * * * * * *

1612 Q. (By Mr. McRoberts) Mr. Irish, with respect to the matter of bulletin boards prior to August, 1941, will you state whether any union was permitted to use the Company bulletin board in the plant?

A. No, there were no unions permitted to use any of the Company bulletin boards.

Q. On August 2, 1941, I believe a contract was entered into with the Chemical Workers Local Union, which provided for a bulletin board, is that correct?

A. Yes sir.

Q. Following the execution of that contract was a request made by the independent union for the use of a bulletin board?

A. There was a request made following that.

1613 Q. Had there been any requests before that?

A. Yes.

Q. Had they been granted or refused?

A. They had been refused.

Q. Following August 2, 1941, do you know when the next request was made by the independent union for the privilege of using the bulletin board?

A. There was a request in the next meeting with the independent union, which I believe was held August 5th or 6th, somewhere along in there. It was August 7th.

Q. Did you attend that meeting as one of the representatives on behalf of the Company?

A. Yes sir.

Q. Were a number of questions asked the Company by the independent union representatives?

A. Yes. By Mr. Harting.

Q. Mr. Harting?

A. Yes. Secretary.

Q. Among those was this question asked: "What is the Company's final answer in regard to whether or not the union will be permitted to buy, rent or lease bulletin boards in the departments?"

A. Yes sir.

Q. I believe no answer was given to that or any of the other questions at that meeting?

1614 A. That is correct.

Q. Did you attend a subsequent meeting between

representatives of the Company and representatives of the independent union on August 11, 1941?

A. Yes sir.

Q. And did Mr. Schotters then give an answer to the union's request with respect to the bulletin board?

A. He did.

Q. What was the answer?

A. He said he would have a bulletin board constructed for their use—one only—and it would be placed where it could be seen by anyone who entered the plant, and he authorized Mr. Crossnoe to clear the matter through the plant department.

Q. Did he place any restrictions on the use of this board by the independent union?

A. He stated it could only be used for normal union uses and information, and it could not be discriminatory or for any political purposes.

Q. Following that were bulletin boards erected, constructed and installed for both the Chemical Workers Local Union and the independent union?

A. Read that question, please.

Trial Examiner Ruckel: Read the question.

(Question read by reporter)

1615 A. Yes sir.

Q. Were they bulletin boards identical in size, shape and pattern?

A. They were constructed from the same drawing, the only difference being the lettering or wording on the boards; one carried the name of the Western Cartridge Independent union and the other, I believe, carried the name of the Chemical Workers Local Union.

Q. Where were those two bulletin boards installed?

A. The Chemical Workers Board was at the side of the roadway at the entrance of the smokeless powder area; and the independent board is at the side of the roadway as you enter the main gate.

Q. What about the time when the two bulletin boards were constructed and put in operation?

A. They were built approximately the same time, as the two were built in the plant department and they were going on more or less simultaneously. They were erected approximately the same time, but which may have been

erected first or opened first I couldn't say, and the records did not disclose that.

Q. Was there some question or controversy with the independent union about a key to their board?

A. Yes sir.

Q. On September 26th did you attend a meeting
1616 between representatives of the Company and representatives of the independent union?

A. Yes sir.

Q. At that time did the representatives of the union ask to be given a key to their bulletin board?

Mr. Evans: Objected to, as immaterial.

Trial Examiner Ruckel: He may answer.

A. It was at a meeting approximately that time.

Q. And, after discussion, was it stated they would be given a key?

A. Mr. Schotters said in that same meeting they were entitled to a key, and it was subsequently shown there wasn't any lock on the board. At the next meeting that matter was cleared up, and Mr. Harting said he felt kind of funny, asking for a key when there wasn't any lock.

Mr. Evans: I move to strike the testimony about the key, as being immaterial.

Trial Examiner Ruckel: It may stand.

Mr. McRoberts: That is all.

Cross-Examination.

Q. (By Mr. Evans) When previous to August 1941 did the independent union ask for a bulletin board?

A. You mean as to the specific date?

Q. Yes.

A. I have attended the meetings with the inde-
1617 pendent union since about February 1941, and they requested the bulletin board or use of the bulletin board in pretty near every meeting I attended during that period. I have reviewed the minutes and every one, I think, refers to it.

Q. That is joint minutes?

A. Yes sir.

Mr. McRoberts: I will have Mr. Dawson testify directly on that, if you wish and I expect to use him.

Q. Do you know whether or not the independent union did post bulletins in the plant prior to August 1941?

A. I have not personally seen them, but I have been in discussions in the independent meetings where—

Q. (By Mr. McRoberts) What kind of meetings?

A. Joint meetings, where it was discussed about their being taken down.

Mr. Evans: I move to strike the answer as not responsive.

Trial Examiner Ruckel: It may be stricken.

Mr. Evans: No further questions.

Re-Direct Examination.

Q. (By Mr. McRoberts) Mr. Irish, what was the discussion about notices being taken down at these meetings between representatives of the Company and representatives of the independent union which you attended?

A. It came out in discussion where they requested
1618 bulletin boards and stated that notices had been taken from the board. Mr. Hamilton said that that was his definite instructions to the guards, to remove any unauthorized notices from the Company bulletin board.

Q. This occurred in connection with the request for use of the bulletin board?

A. Yes sir.

* * * * * * *

R. H. McROBERTS,

called as a witness by and on behalf of the Respondent, having been previously sworn, resumed the witness stand and testified as follows:

Direct Examination.

I have previously been sworn and testified in this case.

Shortly prior to April 21, 1941, my firm was employed to represent, in cooperation with other counsel, the Western Cartridge Company in connection with the request of the Chemical Workers Local Union Number 22574 for a
1619 certification of representatives pursuant to Section 9C of the Act. I was assigned by my firm to handle the matter; made an investigation of the facts; advised the

Company that in my opinion the proposed bargaining unit was not an appropriate one, and that the contract then in existence between the Company and the independent union, known as the basic agreement, and signed, I believe on August 12, 1937 constituted a bar to the recognition by the Company of any other union so long as that contract remained in effect.

We started to prepare the case for trial, and in the course of the preparation I learned from either Miss de Schweinitz, the Regional Director, or from Mr. Wells, the then attorney for the Board, that they had in their possession a letter purporting to be signed by J. B. Chapman and Richard Harting on behalf of the independent union dated April 9, 1941, a copy of which has been introduced in this case as Respondent's Exhibit number 3.

At either my suggestion or the suggestion of Mr. Ebbert, who was associated with us as counsel in this case, an appointment was made with the representatives of the independent union in order to find out what they knew, if anything, about this letter which purported to be signed by J. B. Chapman as President and Mr. Harting as Secretary.

1620 I had a copy of the constitution of the independent union and as I interpreted the document any action of this sort in order to be binding would have to be taken by the executive committee, or whatever their official title was, and I found nothing in there which gave to the officers named the power to execute such a letter. I found nothing in there providing for a precedent.

At this meeting, which was held in the dining room of the main office building of the Company there were present the various representatives of the independent union, Mr. Ebbert and possibly one or more other representatives of the Company, and myself.

We asked the representatives of the independent union if they had authorized this letter or were familiar with it, and they indicated they knew about it.

Mr. Evans: Objection.

The Witness: They stated they knew about it. That no formal meeting of the Board had been held authorizing it, but that it was their sentiment that they thought they would stand by that. They were asked by either Mr.

Ebbert or by me as to the reasons for the execution of this letter, in view of the fact they claimed in the letter to represent all of the employes of the Company, and to properly represent them, and they did not state at that time very definitely just what the reason for their position was.

1621 Later one or more of the members told either me or told Mr. Ebbert and he told me what the reason was, but I cannot recall that that was made to me direct.

Following that meeting the hearing was held on April 21, 23, and 24. The Company asked for oral argument before the Board, which was denied, and on May 12th the Company filed its brief with the Board, in Washington, consisting of some 35 printed pages, and citing a large number of cases—possibly 40 to 50, or more.

The brief was filed on Monday May 12th, and on Thursday, May 15th, the Board's opinion was handed down.

I got a copy of this opinion, examined it, advised the Company that, in my opinion, the opinion was incorrect, and that appeal to the courts should be taken, if under the law an appeal could be perfected. The opinion to the Company was based not only on the merits of the decision as to the appropriate unit, but legal questions arising as to the admission of evidence.

Pursuant to this decision, which directed the holding of an election within not more than thirty days from its date, an election was held on May 26th, I believe the date was, the Company furnishing the Board with all information requested and seeking no delay in that connection.

Following this election and certification of the

1622 Chemical Workers Local Union, the Company received a request—

Mr. Evans: Mr. Examiner, I think this recital is, for the most part, is facts which are already in the record, on which there is no dispute. I do not see the purpose of going over all of this testimony.

Trial Examiner Ruckel: I take it we are almost up to something else.

The Witness: We received a letter dated June 10th from Mr. Olds, which has been identified as Board's Exhibit 3-C, asking for a meeting on June 13, 1941; which meeting was held, and I attended the meeting as one of the representatives of the Company. Prior to attending the meet-

ing of June 13th I consulted with officials of the Company and advised them that under the law they could not take an appeal to the courts from this decision of the Board as a matter of right, and directly; that the only way in which they could obtain a review of this decision would be for an enforcement order to be asked for by the union and granted by the Board, and that then an appeal from such enforcement order could be taken.

Trial Examiner Ruckel: Request for enforcement of the order; what order do you now refer to?

The Witness: To clarify that statement, I advised the Company that unless and until the union should
1623 petition the Board for an order directing the Company to recognize the union and to bargain collectively with it, under the appropriate section of the Act, which I do not have before me at the moment, that no appeal could be taken; but that if such an order were entered—that is, that if the Company should either refuse to recognize the Chemical Workers Local Union or should refuse to bargain collectively with them, and such an order were applied for and entered—then an appeal could be taken in the manner provided by law.

I advised the Company that if they recognized the union and undertook to bargain collectively with them, but were unable to reach an agreement, then the union would have no right to apply for nor the Board have any right to enter any such enforcement order, and that all right to get a court review of this decision of the Board on the appropriate bargaining unit would be gone.

After some discussion, it was decided that if the demands of the union, which had not been presented to the Company, up to that date, were reasonable, and if the Company could meet their demands, then there would be little or no occasion for a court review, and the Company might prefer to simply negotiate with the union and abandon its contention that the decision of the Board was wrong.

Thereafter, and in order to preserve the record
1624 so as to protect our right to court review, if we should be unable to come to an agreement, it was agreed, and the Company authorized me to draft a letter refusing to recognize the union.

Trial Examiner Ruckel: This is before the union had requested recognition?

The Witness: This is after June 10th and before the meeting of June 14th—refusing to recognize the union but inviting them to state their demands and to attempt to draft such a letter so that by inviting the stating of their demands we would not thereby nullify our refusal to recognize.

I accordingly drafted this letter, Board's exhibit number 3-D, dated June 13th, for Mr. Schotters' signature, and Mr. Schotters signed it, and we had it ready for this meeting on the afternoon of June 13th.

Just prior to this meeting, while Mr. Olds was waiting in the lobby at the Company offices, I went out and told him, in substance, that at this meeting there would be presented to him a formal letter that might sound rather technical and legal to him, but that I hoped he would not be disturbed by the technicalities of it, and on the contrary would see if we could not come to an agreement.

Shortly after that the representatives of the union and the representatives of the Company met in the
1625 afternoon of June 13th and at the opening of the meeting this letter, Board's Exhibit Number 3-D, was presented to the representatives of the union.

The union's representatives at first started to tell us what their demands were and mentioned one or two of them, or started to mention one or two, and then refused to state their demands further, taking the position that the Company must recognize the union before the union would tell the Company what they were demanding.

I pointed out to these men at that meeting that if the Company did this it would thereby waive its legal right to a review in the courts of this decision, and in the course of the discussion it appeared that the union representatives had a draft of the contract prepared which they wished to submit to the Company for signature. They refused to let us see a copy of the contract, stating that recognition would have to come first.

I urged the union's representatives to submit this matter to their counsel. None of the union representatives at that meeting were attorneys—Mr. Olds, Mr. Bunzy, Mr. Otten, and Mr. Crossnoe, I believe, and possibly Emmett Ander-

son was one of the representatives. They stated they had no local counsel, and there was some discussion about referring the matter of Judge Padway, in Washington,

general counsel for the American Federation of
1626 Labor, and at the time the meeting broke up it was

my understanding that this was going to be done. I urged upon the union's representatives that they certainly would not be waving any of their rights by stating their demands, that it did not affect them legally in any way, that I could not see any practical loss or damage that they would suffer by telling us what they would ask for, and if they would consult their own counsel I was certain he would advise them to that effect.

The Company next heard of this matter a few days later, when they received a communication from the Conciliation Service of the Department of Labor, stating that the controversy had been referred to them, asking the Company to send its representatives to Washington to attend a meeting there.

Following that the Company sent to Washington Mr. Casteel, its assistant secretary and counsel, Mr. Ebbert was not available and his partner, Mr. Reed, went in his place, and I went as the other representative of the Company. This conference in Washington was set for June 23rd, and on that day the three representatives from the Company and the representatives of the union met with representatives of the Conciliation Service. The Company's representatives pointed out—

* * * * * * *

1635 The Witness: At this meeting the Company's representatives pointed out, both to the representatives and to the Conciliation Service, that our refusal to recognize the union was solely for the purpose of preserving the legal right to court review of the Labor Board decision. That the Company did not feel it could or it should be asked to waive such legal right. That it had not been advised as to the union demands, and if the union would state its demands the Company would be glad to discuss them and endeavor to arrive at an agreement which would eliminate the necessity of further controversy.

The Union's representatives refused to state their demands and insisted that the Company must first grant

recognition, thereby in my opinion causing the Company to waive its legal rights to a court review.

1636 various compromise suggestions were offered, but none could be finally agreed on.

The next day, Tuesday, June 24th, the Company's representatives gave their final answer to the representatives of the union and the Conciliation Service, that for the reasons which I have stated they could not grant recognition to the union; the conference adjourned, and the Conciliation Service certified this controversy to the National Mediation Board.

On the same day, Tuesday, June 24th, the Mediation Board telegraphed the Company setting the matter for a hearing on Friday, June 27th, in Washington, which was subsequently changed to Saturday, June 28th, and on Saturday, June 28th, the officials and attorneys for the Company and representatives and attorneys for the Chemical Workers Union attended a hearing in Washington before a panel of the Mediation Board; and the Company stated its position on this question of recognition and why it had taken the position and was taking the position just about as I have already indicated; and the union's representatives stated its position. These discussions continued both before the panel and separately throughout the day.

No solution of the problem was found that day, and on the afternoon of Saturday, June 28th, the Mediation Board issued its findings and recommendations, recom-

1637 mending the Company bargain with the union as exclusive representative of the employes in the unit certified by the Board as appropriate.

On the following Monday, June 30th, the Secretary of the Mediation Board asked the Company to give its answer as to whether or not it would comply with the Board's recommendations within twenty-four hours. The Company advised it would try to let the Board know something on the next day.

On July 2nd, Wednesday, the Secretary of the Mediation Board telephoned, asking for a yes or no answer by Thursday, July 3rd, and on the same day, Wednesday, July 2nd, the Company wrote a rather lengthy letter to the Mediation Board, outlining and reaffirming its position in this controversy just about as I have indicated, and in

that suggested as a possible compromise solution its thought of separating the smokeless powder division from the rest of its operations and to create a separated integrated economic unit for it. This suggestion was acquiesed in by the Mediation Board and the Union, and on Thursday, July 3rd—

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1640 Mr. McRoberts: Following the receipt of this telegram suggesting a meeting on July 5th, a meeting was held at East Alton, between representatives of the company and representatives of the union, and it was on Saturday and at that meeting the representatives of the union for the first time submitted a draft of the contract outlining their demands. This contract was read aloud and discussed in a preliminary way, and the conference adjourned until the afternoon of the same day.

On Saturday afternoon at two o'clock, July 5th, the conference was resumed, and this time at Alton, Illinois, at the hotel there; representatives of the company and
1641 representatives of the union were present, and each paragraph of the contract submitted by the union were discussed, some being agreed to substantially as written, some being agreed to in principle, and disagreement indicated as to others.

At that meeting on Saturday, July 5th, one of the articles of the contract presented by the union which was discussed was the article which provided—

Mr. Evans: I object to the discussion on the particular articles of the contract, and I do not think those are material.

Trial Examiner Ruckel: Can you indicate the article—

Mr. McRoberts: This one, Mr. Examiner, with reference to the deduction of union dues, about which Mr. Olds was examined, about which there is some question as to whether it was agreed to by the Company and later waived, or later demanded by the Union, and I wish to give the Company's version of that transaction.

Trial Examiner Ruckel: Go ahead.

Mr. McRoberts: One paragraph of the contract which was discussed was the one which reads in part as follows: "The Company will withhold dues upon presentation of

the following authorization signed by employes and turn said dues over to the financial secretary of the Chemical
Workers Local Union Number 22574, East Alton,
1642 Illinois", and then follows a form of authorization for deduction of dues.

One of the Company's representatives, Mr. McAloon, stated he was opposed to those deductions in principle and would recommend that be denied.

However, either Mr. Schotters or I, or both of us pointed out that the Company was deducting union dues for the independent union on wage assignments, subject to cancellation by the employe, and since we were doing it in one case we should give the same privilege to the Chemical Workers Local Union, if the provision which they proposed should be modified so as to give the employe the right to cancel these authorizations, substantially as the independent union's wage assignments were subject to cancellation.

Thereupon I redrafted and have before me copy of the union's contract containing various changes and corrections which we tentatively agreed upon, and my copy shows that this particular provision had been corrected by adding a proviso, in my handwriting, at the end of this form of authorization reading as follows: "Provided, however, that this authorization may be canceled by the undersigned at any time by written notice to the Company."

That was finally approved tentatively by the repre-
1643 sentatives of the union. All of those discussions between representatives of the union and the Company as to approval or disapproval of the provisions of the contract were tentative, in that they were subject to agreement upon the contract as a whole.

Mr. Bradley, one of the union's representatives, as I recall it, did not particularly like this proviso, but indicated tentatively they would finally accept it.

Later, on this subject of a checkoff of union dues, when negotiations on this matter were resumed in Washington, the Mediation Board recommended, and the Company agreed, to insert in the contract as finally executed, a maintenance of membership clause, by the terms of which—

Mr. Evans: That is in the contract, isn't it, counsel?

Mr. McRoberts: Yes, by the terms of which the Company

agreed that any employe who on June 24, 1941, was a member of the union, or who has become a member of the union since June 24, 1941, shall as a condition of continued employment, maintain membership in good standing, and any employe who hereafter during the life of this agreement becomes a member or is reinstated as a member of the union shall as a condition of continued employment maintain membership in good standing.

After the Company agreed to that provision, the request for deduction of union dues was never renewed by the union, nor refused by the Company.

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I broke off this chronological story to testify with respect to this question of deducting union dues. Going on with this meeting on Saturday afternoon, July 5th, we continued negotiations until late in the afternoon, at which time we agreed to adjourn negotiations until Tuesday, July 8th, at two o'clock.

1651

Representatives of the Company and representatives of the union joined in giving a statement to the press to the effect that negotiations had been commenced, had progressed and had been adjourned. Shortly after this a representative of the union telephoned to state that the union committee had decided no progress had been made in the negotiations and it was wiring to the Mediation Board to take charge, and the union canceled the meeting scheduled to take place July 8th.

On Monday, July 7th, the Mediation Board telegraphed pursuant to this request it scheduled a further hearing on Friday, July 11th, at Washington, and in the meantime urging both parties to continue negotiations.

1652

On Tuesday, July 8th, representatives of the Company met with representatives of the union at Alton, Illinois, as originally agreed. The union's demands were taken up in numerical order as they appear in the record, and we progressed until we reached the provision in the union contract which called for a closed or a union shop. The Company's representatives took the position that the Company could not agree to this demand. The union's representatives took the position if the Company would not then and there agree to this demand the union would there-

after refuse to agree to negotiate at Alton. The Company representatives agreed to pass this demand and go on with remaining demands, but this was refused by the union and the meeting was adjourned.

On Friday, July 11th, representatives of the Company and of the East Alton Manufacturing Company which had been incorporated in the meantime, with representatives of the union, met before a panel of the Mediation Board and negotiations continued through Friday, July 11th, Saturday, July 12th, Monday, the 14th, and Tuesday, the 15th.

Then on Tuesday, July 15th, there occurred an inci-
1653 dent, the exact nature of which has been disputed, and the question was whether or not it was the Union's issuing of an ultimatum that broke off negotiations or not, and it is the Company's position that they had been advised an ultimatum had been issued by the Union with respect to the individual contracts, and there was considerable controversy as to just what had taken place and as to what the union had said and what the Mediation Board had said.

The meeting then adjourned and parties were allowed until Friday, July 18th, in which to sumbit other information, data, arguments or briefs. On the 18th the Company submitted its memoranda and exhibits.

On Monday, July 21st, the union filed a brief.

On July 22nd the attorneys for the Company telegraphed a short reply.

Wednesday, July 23rd, the Company advised the chairman of the panel of the Mediation Board it had submitted a proposal outlining three possible methods of dealing with these contracts that were then in existence, and on July 24th we asked the chairman of the panel of the Mediation Board to postpone for twenty-four hours the issuance of its findings in order to permit discussion with representatives of the union with reference to eliminating individual contracts. The union was asked to join in this request, and refused, and the Mediation Board refused to
1654 grant the request, and on the afternoon of the 24th issued its findings and recommendations.

On Monday, July 28th, representatives of the Company went to Washington, conferred with the Chairman of the

panel of the Mediation Board, representatives of the War Department and arranged a conference Monday night with representatives of the union.

At this conference various methods of disposing of the individual contracts were discussed, and the Company requested the union to abandon its claim for a closed or union shop. In the course of these negotiations the Company suggested if an agreement could be reached on the method of dealing with individual contracts and on the question of closed or union shop, negotiations would commence in Alton on Thursday, July 31st, on the question of wages, vacation and other incidental matters which had not been entirely disposed of.

The conference adjourned until July 29th.

At that time the union representatives agreed to a proposal for eliminating individual contracts, and then said unless the Company would agree by Wednesday noon, July 30th, to freeze union membership in accordance with the recommendation of the Mediation Board, the union would not enter into negotiations on the question of wages, vacation and so forth, on Thursday, July 31st, as had been suggested.

On the afternoon of July 29th the Company's repre-
1655 sentatives advised the Mediation Board that they accepted the recommendations, except those regarding wages and vacations, and the recommendation in that respect was that matter be submitted to arbitration. Up to that time, July 29th, negotiations with respect to wages had not yet commenced.

The Company's acceptance of these recommendations was reduced to writing, submitted to the Mediation Board and approved by representatives of the union.

On Thursday, July 31st, at Alton, Illinois, representatives of the Company and of the union commenced negotiations, which continued through that day and were adjourned to Friday, August 1st, continued and adjourned to the next day, and a contract was drafted, and on Saturday morning, August 2nd, was submitted to the representatives of the union, and signed.

That contract, which is in evidence, provides that further negotiations shall continue with respect to adjustments of pay and reclassification of jobs.

Mr. Evans: The agreement is in evidence, isn't it?

A. Yes, that is in evidence, and that provision of the agreement in that respect was carried out, and those negotiations were carried on during the month of August and early in September, and the final agreement with respect to these wages rates was worked out and agreed upon between representatives of the company and repre-
1656 sentatives of the union early in September, the exact date I do not have at hand; was submitted to the union membership and rejected by the members.

Thereafter the matter was again referred back to the Mediation Board and the Mediation Board recommended that the union members accept the agreement; it was resubmitted to the membership of the union, and finally approved and accepted, and became the supplemental agreement, which has not been put in evidence, and that was signed under date of September 29, 1941.

Since the execution of the agreement of August 2nd and the agreement of September 29, 1941, the East Alton Manufacturing Company and the union have been operating under the terms of those two agreements and, so far as I know, the provisions have been complied with by both parties.

I think that is all on that point.

* * * * * * *

1664 FRANK A. SCHOTTERS,

called as a witness, by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. McRoberts) Will you state your name, please?

A. Frank A. Schotters.

Q. Where do you live, Mr. Schotters?

A. 1026 Washington Avenue, Alton.

Q. Where are you employed?

A. Western Cartridge Company.

Q. And your position?

A. General superintendent of the East Alton plant.

Q. How long have you been with the Company, Mr. Schotters?

A. Two years.

Q. When did you become general superintendent?

A. February 1, 1941.

Q. Before that what was your position?

A. I was process engineer.

Q. Mr. Schotters, referring first to the case of Francis Bunzy, did you have any dealings with the Federal Bureau of Investigation with reference to the finger-

1665 printing of your employes?

A. Yes, I did.

Q. Tell us, very briefly, what that was?

A. We had instructions to fingerprint and photograph all of our employes and cooperate with the F B I in making a complete check up of all the employes.

Q. When they were fingerprinted what was done with those records?

A. The fingerprints and photographs were turned into the F B I for further checking.

Q. Did they indicate to you what they wanted you to do in cases where criminal records were disclosed?

A. They suggested we eliminate employes who were in our plant who had criminal records.

Q. That is because of the Defense nature of your work?

A. Correct.

Q. Pursuant to that request did you have all of your employes fingerprinted?

A. We had all of our employes fingerprinted and photographed.

Q. Did you later receive reports from the F B I, or other authorities, with respect to criminal records disclosed thereby?

A. Yes, we did.

Q. Did you in some instances eliminate employes that you discovered had criminal records?

1666 A. Yes, we did.

Q. Did you as a result of that procedure learn that Francis Bunzy had a prior criminal record?

A. Yes, we did.

Q. About when was it that you received that report?

A. I do not remember the exact date, but it was sometime during February or March, I believe.

Q. Of this year?

A. 1941.

Q. After receiving that information did you do anything about it in the Bunzy case?

A. No, we did not.

* * * * * * *

1680 Q. Mr. Schotters, coming to the case of William Elliott, it has been testified that Mr. Elliott was told he might appeal Mr. Day's decision to any superior officer and that Mr. Day would abide by that decision. Did Mr. Elliott come to you?

A. Yes, he did.

Q. Do you recall when it was?

A. I don't recall the date, Mr. McRoberts.

Q. I mean was it the same day he was discharged?

A. That is right.

Q. Did he come to you right after talking to Mr. Day?

A. That is right.

Q. What occurred?

A. He wanted to know why he was discharged and the explanation was made to him that his critical re-
1681 marks had affected production in the department, and we did not allow—I explained to him we did not allow statements to be made by any employe such as he made.

Q. What were the statements?

A. I will not attempt to use his words—

Q. Wait a minute. When you first told him that were you referring to the information you had received as to the reason for his discharge?

A. That is right.

Q. What was the information that you had received?

A. I had received information that he was criticising management, criticising the Olins, the manner in which they took advantage of their employes, that the Olins spent their entire time in devising ways and means of stealing, defrauding, and so forth, moneys that were duly belonging to the employes, that the Company owed a number of men in the casting shop considerable due to a bonus

plan that had been dropped—a bonus method of paying that had been dropped in the cast shop several years past —which was all confirmed by Mr. Elliott when he talked to me.

Q. What do you mean by that?

A. Mr. Elliott told me the same thing.

Q. What did Elliott tell you? In other words, give it in his words the best you can remember.

A. He said that the Olins were a God damned bunch
1682 of crooks, that all they did was spend their time trying to figure out ways and means of taking money away from employes; that the Company owed him several thousand dollars—I believe he mentioned a figure of somewhere around eight thousand dollars; that he was going to collect it; that he had contacted an attorney and was going to see this money was paid to him. I told Mr. Elliott that I did not allow any man to make such statements of men connected with our corporation.

Q. (By Trial Examiner Ruckel) Is Mr. Olin connected with the corporation?

A. There are three Olins.

Q. They are still connected with the corporation?

A. Yes.

Q. (By Mr. McRoberts) Will you identify the Olins Mr. Elliott referred to?

A. Mr. F. W. Olin.

Q. Mr. F. W. Olin is founder and president?

A. Yes. Mr. J. M. Olin, executive vice-president.

Q. He is the son of Mr. F. W. Olin?

A. That is correct; and Mr. S. T. Olin is secretary and treasurer.

Q. He is another son of Mr. F. W. Olin?

A. That is correct.

Q. And the three Olins referred to are the acting
1683 operating heads and executive officers of the Company?

A. That is right.

Q. And the principal stockholders. Now, go ahead with the conversation.

A. My conversation with him was rather short because I had no more time to waste with him; a man who felt that

way and talked that way about the executive heads of the business had no business being in the plant.

Q. What did you tell Mr. Elliott?

A. That there wasn't anything I could do for him.

Q. Mr. Schotters, I believe you attended a meeting on August 14, 1941, in the dining room of the Company's general office building, in East Alton, at which there were present Fred Olds, organizer of the American Federation of Labor, Charles Blume, organizer for the International Molder and Foundry Workers of North America, and John Van Vaerenwyk, organizer for the American Federation of Labor, is that correct?

A. Yes, that is correct.

Q. During that meeting and at that meeting Mr. Spencer T. Olin and you and I appeared on behalf of the Company, is that correct?

A. Yes, that is correct.

Q. Mr. Schotters, at that meeting—

Mr. Evans: Counsel, I do not think there is any dis-
1684 pute on what took place at that meeting.

Trial Examiner Ruckel: Let us stipulate it, if we can.

Mr. Evans: Your testimony is all that there was on that subject.

Mr. McRoberts: I am covering a point that I missed in my testimony, and I expect to go back on and put it in, and it relates solely to Mr. Olds' denial of solicitation at that meeting.

Q. Mr. Schotters, Mr. Olds testified that at that meeting "we were in conference—pages 36 and 37—pertaining to wages, hours, and conditions of employment, and I broached the question and Mr. Schotters stated he would like to see this thing settled. I said there would be one way to settle it. The question I had asked him might sound silly, but nevertheless I was going to ask the question, will he give the members of the American Federation of Labor the privilege of soliciting membership inside of the plant. Mr. Schotters stated he would not. I stated that 'I have been informed a man by the name of Taylor in the Metallic Division—' "

Then there were some objections, and he went on: "That a man named Taylor was soliciting memberships in the

independent union in the Metallic Division, and Mr. Schotters stated he knew nothing about it, that he was not going to permit solicitation to be done during working
1685 hours in the plant."

Was any such request made by Mr. Olds at that time, and if not, just what was said?

A. As I understood it, the request was that representatives of the A F of L be authorized to make solicitations in the plant.

Q. Who do you mean by representatives of the A F of L?

A. Such as Mr. Olds, Mr. Van Vaerenewyck or Mr. Blume.

Q. You did not understand he was referring to employes in your plant?

A. No, I did not.

Q. Was anything said about employes in your plant soliciting?

A. No.

Q. Has there ever been any rule against employes in your plant soliciting memberships in the American Federation of Labor?

A. No, there never has been.

Q. Or the C I O?

A. No.

Q. Or the independent union?

A. No, sir.

Q. Or any other labor organization?

A. That is right.

Q. So long as it does not interfere with the work?

1686 A. That is correct.

Q. You understood what was said by Mr. Olds on that occasion to relate to these professional organizers for the American Federation of Labor?

A. That is correct.

Q. They were the ones you refused permission to solicit in the plant?

A. Yes.

* * * * * * *

1690 Q. Mr. Schotters, approximately how many supervisory employes does the Company have at the East Alton plant?

A. At the present time we have somewhere between 400 and 450.

Q. Have you had an exact check made of the number as of June 30, 1941?

A. Yes.

Q. What was the number on that date?

A. 353 as of June 30, 1941.

Q. Is that substantially the same as it was for four
1691 or five months prior to that date?

A. Yes sir.

Q. And it has since increased?

A. Yes.

Q. (By Trial Examiner Ruckel) About what is the present enrollment?

A. You mean total number of employes?

Q. Yes.

A. About 7500.

Q. That is the East Alton Manufacturing Company?

A. That is the East Alton plant of the Western Cartridge Company—all the plants.

Q. Could you confine it to the East Alton Manufacturing Company for me?

A. No, I cannot tell you that.

Q. (By Mr. McRoberts) Mr. Schotters, the Western Cartridge Company operates the East Alton plant, is that correct?

A. That is correct.

Q. It also owns and operates the New Haven plant at New Haven, Connecticut?

A. That is right.

Q. That is a large plant and employs probably twice as many employes as the East Alton plant?

A. That is right.

Q. You have no connection with the New Haven plant?

1692 A. That is right.

Q. All of your testimony relates to the East Alton plant?

A. Yes.

Q. In the East Alton plant as of July 9th, I believe the date was, the smokeless powder portion of it was leased

to a separate corporation known as the East Alton Manufacturing Company?

A. That is right.

Q. When you speak of the East Alton plant you are referring to the entire organization at East Alton?

A. That is right.

Q. Which includes the East Alton Manufacturing Company?

A. That is correct.

Q. And the East Alton Manufacturing Company leases and operates only the smokeless powder division, with a personnel of perhaps six hundred or more?

A. About six hundred people, that is correct.

Q. Out of a total of seven thousand employes or more altogether, is that correct?

A. Yes.

Q. In those seven thousand of employes, of course, you have a number of clerical and office employes?

A. That is correct.

Q. Approximately what is the total number of maintenance and production employes at the East Alton
1693 plant at the present time, including the East Alton Manufacturing Company?

A. About 450.

Q. I believe you misunderstood my question. The total number of production and maintenance employes?

A. Oh, production and maintenance employes. Between 7100 and 7200.

Q. And that has been gradually increasing during the year 1941?

A. That is right.

Q. I believe the testimony shows early in the year 1941 it was a little over 6,000. This figure of approximately 450 that you gave a moment ago was the total number of supervisory employes?

A. That is right.

Q. Of both the East Alton Manufacturing Company and the East Alton plant as a whole?

A. That is right.

Q. As of June 30, 1941, when you had 353 supervisory employes, of course, that included the smokeless powder

division and there was no East Alton Manufacturing Company at that time?

A. That is correct.

Q. To break that down, very briefly, with respect to one or two of the departments that have been mentioned in testimony, how many supervisory employes did you
1694 have in the brass mill as of June 30, 1941?

A. 54.

Q. Does that include the cast shop?

A. That includes the cast shop, that is right.

Q. How many supervisory employes, approximately, did you have in the smokeless powder division, both maintenance and production?

A. 52. I will have to increase that: That is 84 with the technical group.

Q. 84 with the technical group?

A. That is right.

Q. You treat the technical staff as supervisory employes?

A. No, those are supervisory employes as we class them.

Q. They have technical control over employes in the smokeless powder division when carrying on experiments?

A. And also supervisory control over laboratories.

Q. How many in the plant department, which is the department that has control over maintenance and construction?

A. 21 in the plant department, and 7—that would be 28 total. Seven in the smokeless powder area.

Q. Mr. Schotters, what instructions have been given to your supervisory employes with respect to participating in union affairs affecting the Company's employes?

A. They have all been instructed definitely they are to take no part in any union activities, either pro or
1695 con. This information has been given to the supervisory forces through meetings, foremen's meetings, foremen group meetings, and general discussions with the groups.

Q. Have you recently given to certain department heads and other appropriate officials in the Company books to instruct them as to their duties under the law?

A. Yes, we have.

Q. About when did you do that?

A. In the past three to four months. I don't remember

the exact time. I believe the first books that we purchased were purchased sometime possibly in July and August, and at a later date additional books were purchased.

Q. Is the book to which you are referring one known as Modern Foremanship and Supervision under New Deal Legislation?

A. That is correct.

Q. By Harvey B. Rector and W. A. Rinchkoff, published by Law Research Service?

A. That is right.

* * * * * * *

1697 Trial Examiner Ruckel: On the record. Maybe we can stipulate about this particular part?

Mr. McRoberts: May it be stipulated that the testimony which I gave with respect to the negotiations on July 5th, 1941, and subsequently before the Mediation Board, with respect to the Company withholding dues upon authorizations signed by individual employes, is correct?

Mr. Evans: I will stipulate to that.

Q. Mr. Schotters, approximately when did you commence to participate in meetings between representatives of the company and representatives of the independent union for the purpose of collective bargaining?

Trial Examiner Ruckel: Off the record.

(Discussion, off the record.)

Trial Examiner Ruckel: We will recess for ten minutes.

(Ten-minute recess then had.)

Q. (By Mr. McRoberts) Mr. Schotters, when did you begin to meet with the representatives of the independent union at meetings for collective bargaining, approximately?

A. Sometime during January 1941.

* * * * * * *

1705 Q. (By Mr. McRoberts) Mr. Schotters, I will ask you whether you attended a meeting on November 2, 1940, between representatives of the Company and representatives of the independent union for the purpose of collective bargaining?

A. Yes, I believe I did.

Q. At which—I will try to summarize this.

Mr. Evans: Now, Mr. Examiner, you see counsel is merely going to in effect testify from the minutes. That is objectionable and it is very leading.

Mr. McRoberts: It is very leading, and I am doing that purposely. If the minutes are going to be the testimony, then why have a witness on the stand? Why have questions asked at all? Mr. Examiner, the more I think of it as the result of this discussion the more I feel time will be saved in the long run if we simply offer and receive the minutes in evidence as a whole. I am sure counsel for the Board and for the Company will on brief indicate to the examiner any parts of those minutes that they consider
1706 particularly pertinent, and it may be that the burden upon the Examiner in examining them will be lightened. I believe we may save time in the end.

Trial Examiner Ruckel: It is not only a question of time in this hearing, but the question of time after the hearing, not only the Examiner's time, but the question of copies of the records comes up, and the question of possible future litigation, all of which has to do with testimony much of which is entirely irrelevant. In other words, I would rather spend more time now than save it at the other end, and more of the time of you, gentlemen, possibly and other people at other places will have their time saved. The witness, of course, theoretically refreshes his memory from the minutes. I do not see that it is objectionable, since counsel is going to have the minutes and can cross-examine from them. We will proceed as we started out.

Q. (By Mr. McRoberts) To continue: At which, after some preliminaries, it was stated that the purpose of the meeting was to discuss and ask the Company's consideration of granting a general increase in wages to all employes, and in response to which Mr. Bassett stated that the Company would not grant a general increase, but if the bracket rates were out of line the Company would check on them and at which it was agreed by the Com-
1707 pany and the union that each union representative should in turn work with Mr. Haddleton with bracket rates in his division and attempt to effect changes in the brackets that he thinks are out of line; and at which a question of re-employment of individual employe was taken up and discussed?

A. That is right.

Mr. Evans: I move to strike the reference to some employe as to reinstatement as irrelevant and immaterial.

Trial Examiner Ruckel: It may stand.

Q. Did you also attend a similar meeting on January 10, 1941, at which a discussion was held on the work being done on the brackets; at which there was discussed the effect of the two per cent bonus that the Company had granted to all employes under contract upon the granting of vacations, and the union representatives were advised that it would have no effect; at which representatives of the union were appointed to meet with representatives of the company in an attempt to draw up an agreement acceptable to both the union and the Company, and procedure for cooperative action to remove causes of misunderstanding?

A. Yes, I attended such a meeting.

Q. (By Trial Examiner Ruckel) Was that, in substance, what transpired at that meeting?

A. That is right.

Q. (By Mr. McRoberts) Did you on February 27,
1708 1941, attend a similar meeting, at which there was submitted by this committee made up of union and company representatives appointed for that purpose an agreement for the handling of grievances, and, after discussion, it was accepted and signed by both parties; and at which you read a letter from the Ordnance Department requesting certain work be done on 24 hour day and 48 hour work week, with time and a half to be paid for all over 40 hours a week, and announced that temporary permission had been granted by the Government to violate two laws in that connection; and at which you also made an announcement with respect to the absences from termination of services on account of military service and the treatment which the Company would give to employes entering into such service?

A. I attended such a meeting.

Q. Was that substantially what transpired?

A. Yes.

Q. In part at least?

A. Yes.

Q. I will ask you whether you attended a similar meeting on March 10, 1941, at which a grievance with respect

to the classification of an employe in the plant department was disposed of, and at which the union submitted a working agreement for the Company to take under consideration for acceptance, and after discussion of some
1709 parts of agreement a committee was appointed to revise the agreement to make it acceptable to both parties, and to be presented at the next joint meeting; and at which the Union asked the Company to consider granting a general raise for all hourly rate employes, and you stated that you did not think it hardly fair to ask for a general raise after the Company had granted four thousand raises in the past two months; and at which Mr. Harting, secretary of the union, asked for a complete list of all employes of the Company for use in the union office, and Mr. Haddleton stated that he did not think the Company could grant the list, whereupon you turned the matter over to Mr. Irish to investigate and report to Mr. Harting whether or not the Company would give the list?

A. I attended such a meeting.

Q. Is that substantially what occurred?

A. Yes.

Mr. Evans: I move to strike that part of it with respect to reclassification of an employe in the plant department. It is immaterial.

Mr. McRoberts: What is the basis of the objection?

Mr. Evans: It is immaterial.

Trial Examiner Ruckel: It may stand. I take it that purpose of any and all of these meetings he is being questioned about, Respondent's theory is to show the in-
1710 dependent union functioned as a union and as one free from Respondent's domination?

Mr. McRoberts: That it did function and how it functioned and the course of dealings between the parties and certain specific matters which relate more definitely to points which have been raised in this case. On such matters as these grievances it is merely to show they functioned and how they functioned.

Q. Did you also attend a similar meeting on April 8, 1941, at which the union submitted the working agreement for discussion and approval of the Company, and there followed a discussion of vacation pay; and at which the union requested that there be included in the working

agreement a compensation which employees will receive who are called or volunteer for military service according to the notice put out by the Company; and at which it was agreed Mr. Irish and Mr. Haddleton, on behalf of the Company, and Mr. Tosch and Mr. Harting, on behalf of the union, would again meet and work out the two topics mentioned above and have the agreement ready for approval at the next meeting. Did you attend such a meeting and is that substantially what occurred?

A. Yes, it is. I did attend such a meeting.

Q. Did you thereafter on May 6, 1941, attend a similar meeting, at which a long discussion was held in re-
1711 gard to a general raise for all employes; and you stated that the rates in the factory were higher than for most of that kind of particular work and gave average rates for men and women employes in the Company, and stated that you would supply Mr. Harting with information on wages in the district, so the union could see just what the condition is and why the Company cannot grant a general raise, and stated individual rate changes were taking place all over the factory; at which the union asked if the Company would go on daylight saving time, and you stated you would if the majority of employes wanted it, and suggested that the union make a survey to get the opinion of the employes, and report.

That you then read the draft of the working agreement, showed the changes that the Company had made in it, particularly with reference to the vacation provision and the seniority provision; and no agreement was reached at that meeting with respect to the working agreement?

A. I attended such a meeting.

Q. Is that substantially what occurred?

A. Yes sir.

Q. Did you attend a similar meeting on May 12, 1941, at which you read the draft of working agreement, referred to the changes made in it; a long discussion was held on these changes, the representatives of the union objecting to the changes made in the seniority paragraph;
1712 and at which a representative of the union asked why the agreement was to stay in force until November 1, 1942, instead of one year, and you explained that June was a busy time for the Company, and you wanted

the agreement to expire at a different date, and this would dispose of the vacation question in both 1941 and 1942; and at which meeting it was agreed by the union that if the Company would agree to the following changes in the agreement a meeting would be held in a few days to sign it.

Trial Examiner Ruckel: Cannot we say "certain changes" in order to cut that down?

Q. Well, certain changes in the agreement, a meeting would be held in a few days to sign the agreement, the changes relating to the seniority provision; and the union agreed to accept the changes in vacation plan, if the Company would accept the seniority changes, and you stated that you would take the matter up with Mr. John Olin and you thought the changes could be made and the agreement signed in a few days.

A. I attended such a meeting.

Q. Is that substantially what occurred?

A. Yes sir.

Q. Did you attend a meeting on June 2, 1941, of a similar character, at which, after discussing certain revisions in the minutes of the preceding meeting, there occurred a long discussion of the working agreement and the changes agreed upon by both parties, and it was finally agreed by the union and the Company to sign the agreement with the changes agreed upon, and Mr. Wortz stated the Company would draw up a revised copy of the agreement, with the changes made in it and have it ready for signing the following day?

1713

A. I attended such a meeting.

Q. And was that substantially what occurred?

A. Yes.

Q. Did you also attend a similar meeting on June 13, 1941, which was called for the purpose of discussing general working conditions and different sections of the working agreement and a long discussion was held on the provision of the working agreement defining overtime work. That you were asked by the union to explain the system established by the personnel department of notifying foremen every six months an employe is eligible to wage adjustment or to be told why he is not to receive an adjustment, and that this system will take away any power from the foremen to grant wages, and you then explained the

system and stated no power had been taken away from the foremen and that wages might be adjusted before the six months period is up.

The union then asked if there would be exceptions made in the vacation plan when an employe lacks a few days of being entitled to a vacation with greater number
1714 of hours, and the Company asked the union to submit any of those cases to it and they would be examined and a time limit with grace period would be provided for each inspection group, and the union asked if the company would meet on next Friday to continue discussion of such general working conditions?

A. I attended such a meeting.

Q. Is that substantially what occurred?

A. Yes.

Q. Did you attend a similar meeting on June 20, 1941, at which proposed changes in wage brackets in Divisions number 1 and 5 were discussed—and let me ask you there, by divisions number 1 and 5 do you refer to two of the six divisions into which the plant was divided by the independent union for the purpose of electing their representatives?

A. That is correct.

Q. And at that meeting did the union agree that this change would be satisfactory, if the Company would increase all the brackets in all divisions instead of just the two divisions, and a long discussion followed on the proposed changes; the Company stating it would look into the other divisions and make the necessary changes in those out of line; at which the union asked if the two additional divisions would be checked by July 7th, when an-
1715 other meeting was to be held, and it was agreed that the changes in brackets in the two divisions would be held up until other departments had been considered; at which the union then asked if Mr. Hill, on behalf of the Company, had completed adjustments of the plant department with respect to certain grievances there, and was advised by Mr. Hill that he was working on this department and changes were going through, but the work had not yet been completed?

A. I attended such a meeting.

Q. Is that substantially what occurred?

A. Yes.

Mr. Evans: I move to strike the testimony with reference to the grievances in the plant department as being immaterial.

Trial Examiner Ruckel: It may stand.

Q. Did you attend a meeting on July 7, 1941, at which, after making certain changes in the minutes of the preceding meeting, certain grievances in the brass mill and bar shop were taken up and the union was advised that they were having a meeting on the following Wednesday to straighten out the trouble;

At which Mr. Harting asked you what action had been taken on the letter to you by the union asking for arrangements to be made for bulletin boards in departments for union purposes, and you advised you had not had
1716 time to work on it but you would start working on it soon.

The question of changes in brackets in other divisions was raised and discussed, and the union took the position that they would not accept the changes in the two divisions until all of the brackets were changed for all divisions, because the union is a bargaining agent for all employes and not just one group;

At which it was agreed that another meeting would be held on July 9th.

That the Company would have the proposed bracket changes for all divisions ready to submit for the approval of the union. The changes, if approved, to be effective as of July 13, 1941;

At which you were then asked to explain those changes in the brackets and their operation, which you did?

A. I attended such a meeting.

Q. Is that substantially what occurred?

A. Yes, sir.

Q. Did you attend a similar meeting on July 9th, 1941, at which you stated that the East Alton Manufacturing Company had been formed and would take over the so-called smokeless powder division, and as this was a separate company the independent union was not bargaining agent for those employes under the blanket agreement;

And at which you were asked to clarify the effect
1717 of the blanket increase upon individual raises, and you advised that the plan would be carried on, and those who have raises due now or later will receive them

in addition to the one step-up, or approximately 5 per cent increase in the bracket of the male employes, if in the opinion of their foremen they qualified; and it was agreed by the executive board of the union, after negotiations for the past sixty days on the bracket increase, to accept the one stepup, or approximately 5 per cent increase in the brackets of the male employes, which would automatically give all men on the bracket system a rate increase of approximately five per cent, to be effective as of July 13, 1941; at which the question of classification of employes in the brass mill and bar shop was discussed, and it was announced that they were to have a further meeting between Mr. Irish and the foreman on that question?

A. I attended such a meeting.

Q. Was that substantially what occurred?

A. Yes.

Trial Examiner Ruckel: What was the date of that meeting, Mr. McRoberts?

Mr. McRoberts: July 9th.

Q. Did you attend a similar meeting on August 7, 1941, at which, after arranging to correct the minutes of the preceding meeting, you were asked by a representa-
1718 tive of the union as to who had the power to grant an employe a leave of absence, as there had been some question about this, and you advised as to the procedure which had been drawn up covering this matter;

At which a long discussion was held on the question of the general raise, the union pointing out the increased cost of living;

At which female wage rates were discussed and comparison made by the union of rates of female employes in the Western Cartridge Company with those rates of female employes in other industries in surrounding area, the union stating that wage rates of female employes in other industries were higher than those of female employes in the Western Cartridge Company, and thereupon you said you would like to have some time to check into this question to determine what condition does exist.

The Union then said that the female employes felt they were entitled to a wage increase, and they thought they should have received one when the male employes received one on July 13th; and it was then agreed to discuss further the female rates at the next meeting;

At which Mr. Harting, on behalf of the union, asked you for an answer to the following question:

(1) Will the Company grant the union a bimonthly report of layoffs, transfers and changes in clock numbers.

1719 (2) What is the Company's final answer in regard to whether or not the union will be permitted to buy, rent or lease bulletin boards in departments.

(3) When is the Company going to circulate booklets covering the history of the Company and containing the working agreement and grievance procedure signed by the union and the Company.

(4) When will the change of four thousand clock numbers take place?

(5) The union and the Company have an agreement to the effect that any employe regularly employed who reports for duty on orders of the department head and is then sent home will receive two hours pay, provided the cause for the employe being sent home could have been reasonably anticipated or was for convenience of management; will the company agree to change the time allowed under this regulation to four hours?

Then you stated you would try to find answers for those questions for the next meeting, and that a general discussion as to working conditions throughout the plant ensued?

A. I attended such a meeting.

Q. Is that substantially what occurred?

A. Yes.

Q. Did you attend a similar meeting on August 11,

1720 1941, at which the following answers were given to the questions outlined by the union at the meeting of August 7, 1941:

(1) The Company will grant the union a bimonthly report of all layoffs, transfers and changes in clock number;

(2) Mr. Schotters stated that the union will be furnished one large bulletin board. The bulletin board will be like those in the plant yard, but will be separated from others and be placed in a convenient place so all employes will see it as they come in the plant from the clock house. Mr. Schotters said the bulletin board could not be used by the

union for discriminating or political notices. Mr. Crossnoe would have it built within a week or ten days.

(3) The book containing the history of the Western Cartridge Company and working agreement and grievance procedure is not yet completed, but the Company should be able to give an answer on it by August 18, 1941.

(4) Mr. Haddleton stated change in clock numbers should be completed within thirty days.

(5) Mr. Schotters asked for more time to study the agreement referred to under time allowed under regulation if employes should report for work and are sent home.

Thereupon a long discussion was held on the rates of female employes, the union representatives holding to the opinion that female employes deserved an increase in hourly and piece-work rates, and it was agreed to
1721 discuss their rates more fully at the next meeting;

At which Mr. Greer, who attended the meeting in the capacity of advisory committeeman for the union, asked for a closed shop and pointed out the advantages which he thought could be gained by employes through a closed shop; at which Mr. Jones, on behalf of the union, asked you if you were still working on the merit rating system, as he had not heard anything about it recently; and you stated due to the unusual amount of work in the past few months, Mr. Strong had not had time to do very much work on it, but they were going to get started to work on it again.

A. I attended such a meeting.

Q. Is that substantially what occurred?

A. Yes sir.

Q. Did you attend a similar meeting on August 19, 1941, at which Mr. Jones asked you for an explanation of the discharge of an employe because he had a prison record, after the employe had worked three weeks. You explained that the employe was investigated by the F B I and it takes about three weeks to get a report on them. That the employe referred to had served two years for arson, and it was recommended by F B I to discharge him, as the factory is working on ammunition orders and is a defense factory;

At which Mr. Haddleton said he would furnish the union with a weekly report of all layoffs, transfers and
1722 changes in clock numbers, instead of a bimonthly report;

At which you then presented a proposed schedule of increase of hour rates and piece rates of female employes as outlined in the minutes of the meeting; whereupon a long discussion of female employes rates followed, the union taking the position that female employes should be on a bracket system and should receive a raise every six months like the male employes, and that their maximum rates should be increased, and the union stated that they would present a counterproposal at the next meeting.

Mr. Crossnoe reported he would try to have the bulletin board up by Saturday.

A. I attended such a meeting.

Q. Is that substantially what occurred?

A. It is.

Q. Mr. Schotters, interrupting for a moment, and going back for a moment to a previous meeting about which you testified, at which you were asked by representatives of the union for a list of all employes of the Company; and the minutes so far show nothing having been done in response to that request; did you ever give them that list?

A. No. That was refused.

Q. Did you attend a similar meeting on August 25, 1941, at which the union presented a petition signed by employes in the plant department, requesting better
1723 washroom and locker facilities in that department, and you said you would have that taken care of right away;

At which the union agreed, after negotiations for the past six weeks, to accept the proposed rate changes for female employes on hourly and piece work rates, and an adjustment for all piece work rates, the details being set forth in the minutes; the changes to be effective as of August 24, 1941.

At which the union again asked with respect to the time for employes reporting for work and being sent home, and you said that the Company would grant the four hours, and that an agreement would be drawn up to that effect;

At which you advised that the bulletin board was ready and the union could start using it at any time;

At which Mr. Jones, on behalf of the union, stated that the union was demanding 5 cents per hour increase for all female employes on hourly and piece work rate, and 10 cents an hour increase for all male employes on hourly and piece work rates. He said that the cost of living and clothes were going higher and higher and wages were not increasing accordingly, but wages were below those of other industries in the vicinity. Then Mr. Irish stated that the increase in cost of clothing and food had been smaller than increases received by the employes; and you asked for time to study the conditions and to check
1724 to see just what changes had taken place in the past year; and at which Mr. Harting, on behalf of the union, told the Company representatives that when the Company was ready to meet the union's demands to notify the Board.

Did you attend such a meeting?

A. I did.

Q. Is that substantially what occurred?

A. It is.

Q. Also, while I think of it, Mr. Schotters, who writes up these minutes of the joint meetings, the Company or the union?

A. The union writes them.

Q. The union writes them?

A. That is right.

Q. And they are submitted at the following meeting and approved or corrected, as the case may be?

A. That is right.

Q. Did you attend a meeting on September 3, 1941, at which the union asked you what proposal had been made by the Company to the union's demands in the smokeless powder division and you stated that the Company had made the same proposal to them as they were going to make to the Western Cartridge Employes independent union in a counter proposal to the union's demand for 5 cents increase for all hourly and piece work female
1725 employes and 10 cents per hour increase for all hourly and piece work male employes, the Company's proposal being to increase all male brackets 3 cents and all

employes to move up 3 cents in the brackets, except those employes whose rates are now one dollar per hour or more.

At which the union representatives then asked why employes' rates who were making $1.00 an hour would not be worked out in the same manner as other employes; and you stated there would be no change in their rates, but you were going to work on it and see what could be done;

At which you stated female employes would get a one cent increase on the hour at this time, as they got a 2 cent raise on August 24th, and with the additional one cent will have received a three cent raise, the same as male employes;

At which you stated you had checked the rates of other industries and the rates of the Western Cartridge Company were in line, and you did not feel that the Company could grant a flat five and .... cent raise, as the Company tried to keep in line with other industries.

At which Mr. Crossnoe, on behalf of the Company, said that the ammunition and brass manufacturing business could not be classified with other businesses in this area, as the Western Cartridge Company has a longer process for manufacturing brass and ammunition than oil
1726 refineries have to refine oil or glass companies have to manufacture bottles. That the products of the Company require fifteen and twenty operations, and for that reason there is low profit, and the Company cannot pay the wages that the refineries pay, as competition is so keen in the Western's line of business, and you then quoted some rates from the Standard Oil and the Glass Company.

The Union's representatives did not agree to the rates quoted, as they had checked the rates and found them to be higher.

At which a general discussion was then held on rates at the Western Cartridge Company; at which a representative of the Company stated that the rates for mechanical and machine men at the Company were higher than the rates for same line of work in the St. Louis area.

Mr. Harting asked if the Company had Government contracts on a cost-plus, as employes thought nearly all Government orders were, and a general raise would not cost the Company anything; and you stated that the Company had no such orders, and that was one reason why the Com-

pany could not overstep the actual cost, because these orders would have to be filled at the price taken.

At which Mr. Harting, on behalf of the union, asked by some of the new employes who had been working three months or more had not been asked to sign an em-
1727 ploye's individual contract; and at which you stated that if any employe who worked three months had not been asked to sign a contract it was an oversight on the part of the contract department or the employe had failed to pay any attention to the notices on their time cards telling them to stop in at the contract office and sign a contract. Thereupon Mr. Harting said some of the new employes did not know where the office is, and it was suggested that there should be posted signs showing where the contract office is.

Thereupon the executive board of the union said they would like time to study the counterproposal made by the Company and see if the employes would accept it. The union would request a meeting at a later date.

A. I attended such a meeting.

Q. Is that what occurred, substantially?

A. Yes.

Trial Examiner Ruckel: We will recess until 1:30, this afternoon.

(Thereupon a recess was had until 1:30 o'clock on January 2, 1942).

1728 After Recess.

Thereupon at 1:30 o'clock P. M. on January 2, 1942, the hearing was resumed, pursuant to recess.

Trial Examiner Ruckel: The hearing will be in order, please. At the noon recess counsel had not completed the examination of Mr. Schotters with respect to joint meetings between the union and the respondent.

Mr. McRoberts: With the consent of the Examiner and opposing counsel, in order to save Mr. Schotters' time, we may endeavor to finish up that part of it, perhaps, by stipulation, as to what Mr. Schotters would say on direct examination on these points involved, and he will be available a little later in the afternoon on these points involved, and I will recall him.

Now, may it be stipulated that Mr. Schotters, if present, would testify that he also attended a similar meeting held on September 19, 1941, at which the union inquired as to the average rate for male and female employes at the Western Cartridge Company and was given the information 80 cents per hour for male, 48 cents per hour for female.

The union stated that the employes would not be satisfied with a three cent increase for male employes and a one cent increase for female employes.

That the representative of the union stated he had
1729 talked with some of the female employes and the majority of them he talked to were not in favor of the union accepting the proposed increase. That the union still held to the position that the employes were entitled to a ten cent increase for all male employes on hourly and piecework rates, and 5 cent increase for all female employes on hourly and piecework rates.

Mr. Schotters then said that the Company could not offer anything more than what they had already offered, as it was the Company's policy to keep in line with living costs.

Mr. Schotters then said that he would present at the next meeting figures to show living costs had not been increased in the district as much as the union claimed they had and would show just what percentage of increase in wages the average person at the Western Cartridge Company had received since the first of the year.

A meeting was requested by the union for September 24, 1941. The union then asked Mr. Hill if any improvements had been made in regard to the washroom facilities and lockers in the plant department and was advised that plans had been drawn up for changes and final approval had not been given and he was going to continue to work on them.

A union representative asked Mr. Chapman to appoint a union committee to meet in joint meeting with the Company on three grievances that were taken up and
1730 were ready to go before a joint committee of the union and company representatives, and it was arranged a meeting would be held on September 23rd.

Mr. Evans: At this point I want to move to strike the reference to the grievances as being immaterial to the issues.

Trial Examiner Ruckel: It may stand.

Mr. McRoberts: That Mr. Greer then opened a discussion on the frozen and closed shop, and a long discussion ensued. May it be stipulated that Mr. Schotters would testify that he attended such a meeting and what I have just related substantially describes what took place?

Mr. Evans: I will stipulate that would be substantially what he would testify to.

Mr. McRoberts: That he would testify he attended such a meeting and would testify what I have just related is substantially what took place.

Mr. Evans: This stipulation you understand, now, is not barring any cross-examination or anything like that.

Mr. McRoberts: No, it is merely a stipulation as to what his testimony would be.

Trial Examiner Ruckel: That is right.

Mr. McRoberts: Not as to the truth of his testimony. Next, that Mr. Schotters attended a similar meeting on September 26, 1941, at which he presented a report
1731 on the percentage of wage increases, by departments, since January 1, 1941, showing 17.3 per cent to male employes, and the factory union contending that the largest part of the percentage increase in rates was due to the three and six months set up for granting individual raises on merit rating plan, and not due to increased living costs.

Living costs were then discussed and statistics presented by the Company, the union pointing out that living costs in the Alton-East Alton-Wood River area could not be compared with the St. Louis area, because labor is cheaper in the St. Louis area.

Mr. Schotters contended that he thought the increase offered by the Company was fair; the union contending that the proposed increase was small in comparison with increases in other industries in the area in the past nine months, and in all probability the employes would not ratify the increase.

Mr. Irish then presented a report of the joint committee on the several grievance cases and asked the union committee to sign them. Two of the union representatives did not like the decision made and stated they wanted to investigate them further, and the matter was postponed for a few days.

Mr. Evans: At this time I wish to move to strike the reference to the grievances as being immaterial.

1732 Trial Examiner Ruckel: Objection overruled.

Mr. McRoberts: Mr. Harting then read certain demands made by the union dated September 26, 1941, signed by the executive board, as follows: We, the executive board of the Western Cartridge Employes Independent Union, in behalf of the employes of the Western Cartridge Company, hereby demand a flat ten cents per hour increase for all employes on an hourly and piecework rate. All wage increases in the past have been adjustments of wages and shall not be considered as a general raise. Due to the increased living costs we feel that our demands are justified. We further demand that all matters of hours and wages be negotiated through the Western Cartridge Employes Independent Union as agreed in working agreement signed on June 4, 1941. To date matters are being handled by the Western Cartridge Company and not negotiated through the union as agreed upon in the union agreement. We feel this is an unfair labor practice. Unless demands are settled satisfactorily by October 19, 1941, a strike will be called on Sunday, at midnight, October 19, 1941, and unfair labor practices shall be filed with the National Labor Relations Board.

Thereupon Mr. Harting asked Mr. Schotters why the union had not been given a key to the union bulletin board, so notices could be put up by the union. After some discussion, Mr. Schotters granted the union a key to the bulletin board.

1733 May it be stipulated Mr. Schotters would testify he attended such a meeting and would testify what I have just recited is substantially what occurred?

Mr. Evans: It is so stipulated. It is understood with the same reservation, that cross-examination goes with all of this.

Mr. McRoberts: That is understood. Next, Mr. Schotters attended a similar meeting on October 6, 1941, at which Mr. Schotters explained that the Company had considered every angle and did not feel that the union's demand for a flat ten cents per hour increase was justified. That the Company's policy has always been to keep in line with other industries in the vicinity by giving increases

by changing individual rates and not by granting flat raises, as other industries had.

There then followed a long discussion of the cost of living and general conditions throughout the district.

Mr. Schotters then stated that the Company might be able to work out a program of readjustment of the brackets and adjust rates of the employes in the lower brackets, and it would average about six per cent increase for all employes in the plant department. Including the three cent increase proposed by the Company, the total increase would be approximately ten per cent. That the female employes would receive a two cents per hour increase.

1734 Mr. Irish said he would check into the individual cards by department and see how much they are out of line.

Then a short discussion was held as to what would be the fairest way to check through the department to see how it stands, and it was agreed to make a simple analysis on the basis of approximately every tenth card, and that the division heads would meet with the Company in a few days, upon call by the Company.

May it be stipulated that Mr. Schotters, if present, would testify that he attended such a meeting and would testify what I have related is substantially what occurred?

Trial Examiner Ruckel: What is the date of this meeting?

Mr. McRoberts: October 6th.

Trial Examiner Ruckel: The meeting before that was what?

Mr. McRoberts: The meeting before that was September 26th.

Mr. Evans: I will stipulate as counsel has stated.

Mr. McRoberts: Next, Mr. Schotters attended a similar meeting on October 14, 1941, at which Mr. Schotters read the Company's final proposal:

(1) Adjust all steps of male wage brackets upward three cents, and increase base rates to produce 3 cents per hour more on present standard production basis, thereby

1735 raising each male employe three cents per hour.

Adjust all female job rates and brackets upward two cents, and increase base rate to produce two cents per

hour more on standard production basis, thereby raising each female employe two cents an hour.

This will be done immediately and be effective October 19, 1941.

(2) Review each female employe rate to determine proper step in the bracket and grant increase where necessary to place them on proper step by use of work rate change cards made out immediately.

This will be done as rapidly as possible and be made effective as soon as job can be completed. A definite method for determining proper step will be agreed upon on the following basis: The time of the step will be determined from beginning of employment or transfer to a new job. In the latter case a review of previous classification will be made. The July 13th adjustment will be counted as time of one step for employes on payroll prior to that date.

(3) Review number of steps on the wage bracket and reduce number of steps by elimination from the bottom when reduction is desirable. In cases of steps being eliminated employes on each classification will all be placed on proper step of the new bracket as proposed in paragraph 2 above.

1736 Then follows a summary showing effect of wage increases from January 1, 1941, including this proposal, showing a total increase on male rates of 20.3 per cent and on female rates of 8.25 per cent.

Thereupon a long discussion was held on how many employes would be benefited and how the cards would be checked, and it was agreed that each union representative would sit in while his division was being checked and the rate change increases made out while they were checking the cards and would be effective immediately.

A long discussion was held by the union representatives on whether or not to accept the proposal. The Company representatives left the room while a discussion was held by the union.

The vote of the five union representatives on accepting the proposal was three in favor of accepting it and two opposing.

The company representatives were called back in the room and given the decision of the board.

The union then asked how soon they would start work on the readjustments and how long it would take, and were told the work would be started right away and could be completed in a short time and the representatives would be called just as soon as the Company representatives got to the different departments.

1737 May there be a similar stipulation with respect to Mr. Schotters' testimony regarding that meeting?

Mr. Evans: It is so stipulated.

Trial Examiner Ruckel: Off the record.

(Discussion, off the record)

Trial Examiner Ruckel: You have examined all of these minute books, have you, Mr. Evans?

Mr. Evans: Yes.

Mr. McRoberts: That on March 8, 1938, a meeting was held between representatives of the union and representatives of the Company, at which time Mr. George L. Dawson appeared for the Company.

Trial Examiner Ruckel: May it appear in the record who Mr. Dawson was?

Mr. McRoberts: In any event, Mr. Dawson will testify as to his exact position at this time, whether it was personnel director or just what title he bore.

That at that meeting the union asked that the schedule of regulations for employes' vacations as agreed upon in previous discussion be reduced to notice to all employes and posted by the Company, which was agreed to.

The union proposed that written agreements be arrived at as the result of discussion between representatives of the union and the company.

The question of the showerbath in one department

1738 was taken up and approved.

A general discussion was held on group insurance, the representatives stating it was their belief that all employes should be urged to take advantage of the group insurance.

Various individual cases were discussed.

There was a discussion of the policy of working a short week with a large number of employes on payroll as compared to a longer work week with fewer employes, and it was the opinion of those present that the best interests of all would be served if the company pursued the policy of

working a longer week with fewer employes, but reductions could be made to as low as four days per week.

May it be stipulated that Mr. George L. Dawson, if present, would testify he attended such a meeting, and what I have related substantially describes what occurred?

Mr. Evans: It is so stipulated.

Mr. McRoberts: On March 31, 1938, there was a meeting and at that meeting union representatives inquired as to the posting of the vacation notice. Petitions were then presented by representatives of two divisions with respect to the date of vacations.

Petitions were then presented by representatives of the union to have the working schedule changed so as to
1739 start to work at 7 instead of 8; which was agreed to by the Company, subject to the approval of the railroad company.

The Union then suggested that arrangements be made to have the Illinois State Bank of East Alton keep open until 5 P. M. on pay days, and the Company said they would see what arrangement could be made.

The Company representatives then discussed business conditions as they affected the Company.

The union representatives inquired as to when the classification could be put into force, and, after some discussion, it was agreed that the Company was to refigure the classification and present it at a future meeting.

Company representatives then explained, briefly, a proposed mutual hospital benefit for employes, and it was decided to investigate the proposition more thoroughly, to be presented at the next meeting.

May we have a similar stipulation?

Mr. Evans: It is so stipulated.

Mr. McRoberts: On June 2, 1938, a similar meeting was held, which Mr. Dawson attended as one of the Company representatives. The Company reported that the regulations of the Bankers Association prevented the keeping open of the Illinois State Bank as requested by the union.

1740 The Company then reported on refiguring the classification as far as it had been done to date.

The union presented request regarding a drinking fountain and certain electric fans in different departments,

which the Company agreed to, subject to the approval of the Safety Department.

Discussion of a shower in the department followed. The Company announced that it would install it as soon as the material arrived.

Vacation notice was discussed.

Discussion of the base rate to be paid employes while on their vacation followed.

Request was made for special vacation arrangements for certain employes.

The matter of group hospital insurance was then discussed.

The union requested that the pay day of July 8th be changed to July 1st. The Company said they would consider it.

The Company told the union representatives that they would appreciate any suggestions they might have in regard to laying off or arranging the working schedule in the brass mill, but no plans or suggestions were offered.

May we have a similar stipulation with respect to that meeting?

Mr. Evans: It is so stipulated.

1741 Mr. McRoberts: On October 11, 1938, a similar meeting was held, which Mr. Dawson attended as one of the Company's representatives.

A union representative asked that the rates of pay for employes working on classified jobs be brought within the brackets set for their jobs. Company representatives said they would correct any specific cases called to their attention. After a discussion on the classification plan it was decided to take a department at a time and the representatives of the union of that department and Mr. Dawson and Mr. Bassett, for the Company, adjust the rates so as to meet the classifications. Mr. Keefe for the union suggested fifty per cent of the bracket of rates be allowed for length of service and fifty per cent for ability. After some discussion, the matter was left unsettled.

The union representative presented a copy of a merit grading, which the Company took under consideration.

Company representatives gave notice that employes on hazardous jobs had been issued goggles, and any employe not wearing his or her goggles as instructed would receive

one week layoff for the first offense and be dismissed for second offense.

A petition was presented by the union asking for change in working schedule. After discussion, the Company
1742 denied the request.

Mr. Keefe, for the union, raised a question as to whether employes have the right under the basic agreement to present petitions or bargain in a group with the Company and it was stated that legal advice would cover the matter.

May we have a similar stipulation with respect to that meeting?

Mr. Evans: It is so stipulated.

Mr. McRoberts: A meeting was held on January 24, 1939, at which Mr. Dawson appeared as one of the Company's representatives, at which representatives of the union asked that employes be granted vacations with pay for 1939 and older employes be given two weeks. The Company representatives stated that vacations would be granted, the exact date to be determined later and that the owners of the company would be consulted about granting two weeks vacations to older employes.

Further discussion of the employes eligible for vacations followed.

Inquiries were then made about changing the spring working schedule.

The Company reported with respect to work on classification.

Mr. Wilmering for the union asked that the business agent of the union be recognized and the union be
1743 granted a closed shop.

Mr. Nelson for the union opened a discussion about a working agreement.

Mr. Dawson explained an annual wage plan in existence in another plant.

May we have a similar stipulation?

Mr. Evans: It is so stipulated.

Mr. McRoberts: On March 17, 1939, a similar meeting was held, which Mr. Dawson attended as one of the representatives for the Company. The Company reported a check made of employes who would be granted vacations.

The union representative read and presented a proposed

working agreement between the Company and the independent union. Discussion followed.

May we have a similar stipulation with respect to that meeting?

Mr. Evans: It is so stipulated.

Mr. McRoberts: On March 31, 1939, a similar meeting was held, which Mr. Dawson attended as one of the representatives of the Company; at which meeting the union representative asked if the Company was ready to sign the working agreement presented by the union and was advised on behalf of the Company that the Company could not at this time sign that agreement, but would negotiate each topic with the union. Negotiations
1744 were started, and the meeting was then adjourned, to meet again on April 7th.

May we have a similar stipulation?

Mr. Evans: It is so stipulated.

Mr. McRoberts: On April 14, 1939, a similar meeting was held, also attended by Mr. Dawson, at which the Company presented a proposal of regulations for vacations.

The representative of the union asked that employes in the high explosive department be allowed to work 44 hours instead of 40, or that another man be put on the job; and a discussion of this matter followed.

The Company representatives stated they would report on the question of overtime at the next meeting.

May we have a similar stipulation?

Mr. Evans: It is so stipulated.

Mr. McRoberts: On April 21, 1939, a similar meeting was held, attended by Mr. Dawson as one of the Company's representatives. The Company representatives gave certain information regarding length of service of certain employes. Discussion followed:

The union then presented their redrawn regulations for vacations. Discussion followed.

The Company then gave a report on payments for overtime work, and discussion followed.

A general discussion of Illinois unemployment insurance was then held.

1745 May we have a similar stipulation?

Mr. Evans: It is so stipulated.

Mr. McRoberts: On May 5, 1939, a similar meeting was

held, attended by Mr. Dawson as one of the Company's representatives; at which the Company reported on the progress made on figuring the three vacation plans. An agreement was reached upon the eligibility of employes as proposed by the draft presented by the Company on vacations.

A general discussion of section 4, the employment section of the contract presented by the union to the company was held.

May we have a similar stipulation with respect to that meeting?

Mr. Evans: It is so stipulated.

Mr. McRoberts: A similar meeting was held on May 12, 1939, attended by Mr. Dawson as one of the Company's representatives, at which the Company proposed to close the plant on May 29, 1939, preceding the holiday May 30th. Discussion followed regarding the possibility of leaving as many people as possible on Saturday, June 2 or June 3.

Negotiations were started on the three vacation plans, but, after some discussion, no agreement was reached.

May we have a similar stipulation?

Mr. Evans: It is so stipulated.

Mr. McRoberts: On May 16, 1939, a similar meeting
1746 was held, attended by Mr. Dawson as one of the Company's representatives, which was confined to a discussion of various vacation plans under consideration.

May we have a similar stipulation with respect to that meeting?

Mr. Evans: It is so stipulated.

Mr. McRoberts: On May 31, 1939, a similar meeting was held, attended by Mr. Dawson as one of the Company's representatives, at which a detailed vacation plan was presented by the Company. A recess was then taken by the union, during which a secret ballot was taken on whether to accept the vacation plan as presented or put to vote of members of the union at a mass meeting; the result of the vote being four in favor of accepting and two to present it to a mass meeting. The meeting was reconvened and the union representatives advised the Company representatives that the vacation plan would be accepted.

On June 9, 1939, a similar meeting was held, attended by Mr. Dawson as one of the Company's representatives, at

which there was a discussion of some of the details of the application of the vacation plan, and certain changes were made in it.

On June 15, 1939, a similar meeting was held, attended by Mr. Dawson as one of the Company's repre-
1747 sentatives, at which the service records of 284 employes not eligible for vacations under the regulations of the vacation plan were examined, and it was agreed that certain changes in the eligibility requirements would be made for the year only, so as to take care of some or all of these cases.

The question arose as to the reasons for the discharge of one of the employes. The Company stated the reasons.

Mr. Evans: I move to strike that as not relevant.

Trial Examiner Ruckel: It may stand.

Mr. McRoberts: A similar meeting was held on July 13th, 1939, attended by Mr. Dawson as one of the Company's representatives, at which there was a discussion of the working agreement.

Mr. Evans: You mean proposed working agreement?

Mr. McRoberts: It says "working agreement", but I guess "proposed" is correct. Proposed working agreement.

On August 11, 1939, a similar meeting was held, at which Mr. Haddleton, a new representative of the Company, was introduced, and five new union representatives were introduced.

The basic agreement was read and its relationship to the individual contracts and the union was explained by Mr. Bassett on behalf of the Company.

Mr. Bassett then stated that the Company would not be a party to any contract that would force an employe
1748 to join any organization, nor would the Company discriminate, interfere or coerce any employe who did join any organization. That the memorandum of agreement given to the Company on April 1, 1939, for consideration in his, Mr. Bassett's opinion, was illegal because section 4 of the employment section asked the company to force an employe to be a member of the union. Mr. Wilmering, for the union, replied that it was his belief and union attorneys' belief that section 4 of the employment section of the memorandum of agreement was legal

and would be upheld in any Federal or the Supreme Court of the United States.

Mr. Wilmering, for the union, then asked if the Company had a plan of seniority to present and was advised that some work had been done on it, but it was not ready.

Motion was made by a union representative, seconded by a company representative, that a committee be appointed consisting of two representatives of the union and two representatives of the company, to consider workable plans of seniority, when completed to be presented to the representatives of the union and of the company in a joint meeting. Such committee was appointed, with instructions to start work immediately and continue day by day until they had such a workable plan of seniority.

Mr. Harting, for the union, asked if the classification of wages was completed, and was advised it was
1749 practically complete and work would be continued on it until it was finished.

The union representative asked why people with seniority standing were not called back to work instead of new people, and he was advised that there was considerable pressure on the company to re-employ individuals from the surrounding territory, and that it was the policy of the Company to call back old employes first.

Mr. Wilmering, for the union, then asked the Company to supply the secretary-treasurer of the union with a complete list of the personnel of the Western Cartridge Company. Mr. Bassett said he would give this request consideration.

On August 22, 1939, a similar meeting was held, attended by Mr. Dawson as one of the Company's representatives. Mr. Bassett announced that the company had received the union's demand for ten per cent increase for all piecework and hourly rate employes. That the Company had considered it and at this time could not grant the increase. The Company would consider a longer working week which would increase the yearly income of the employes. Mr. Bassett stated for the Company various reasons for the Company's position.

Mr. Wilmering, on behalf of the union, stated that regardless of these reasons the employes deserved a ten per cent increase in pay, that the cost of living had increased

while pay checks had not, and we feel we should at
1750 least receive the average rate of pay per week paid by manufacturers in the State of Illinois.

Mr. Bassett advised that on October 2, 1939, the plant would go back to the winter working schedules.

On September 27, 1939, a similar meeting was held, attended by Mr. Dawson as one of the Company's representatives.

Mr. Bassett stated the Company would not at this time grant the ten per cent increase to the piecework and hourly rated employes, but a program of increased working hours has been started that will give to the employes increased earnings.

A two-hour discussion concerning business and the conditions of the country at the present time ensued, in which there was discussed rates of pay in the district and other statistics on living costs and wages.

On October 27, 1939, a similar meeting was held, attended by Mr. Dawson, as one of the Company's representatives. A union representative asked if time and a half would be paid to all employes working over 42 hours during the work week starting October 23, 1939, and was advised that time and a half would be paid for all hours over 44 during the week of October 23rd, and thereafter over 42.

The union then asked if the Company would meet the union's demand of September 12, 1939, and was advised that the company would not at this time meet the
1751 demand—the demand referred to being a letter dated September 12, 1939, addressed to the Western Cartridge Company, signed by the six representatives of the union, and reading: "We, the representatives of the Western Cartridge Employes Independent Union, demand of the Western Cartridge Company a ten per cent increase in wages for all persons on piece work and hourly rate basis, to become effective October 1, 1939".

Said demand also being supplemented by a letter dated October 12, 1939, also signed by the six representatives of the independent union, addressed to Mr. Dawson:

"Dear sir: The following resolution was passed by the union members of the Western Cartridge Employes Independent Union on October 4, 1939: Be it resolved by the membership of the Western Cartridge Employes Inde-

pendent Union that the executive board of the Western Cartridge Employes Independent Association shall demand another meeting with representatives of the Western Cartridge Company for further negotiations of the union's demand of September 12, 1939, for a ten per cent increase for all piecework and hourly rate employes. If at the expiration of thirty days satisfactory negotiations have not been arrived at between the union and the company, the executive board must, within ten days after the expiration of the thirty day period, call for a strike vote of its membership.

1752 "We, the executive board, sincerely hope and believe that an agreement will be reached between the company and the union. We realize the hardships that will be placed upon the employes in the event of a strike. We also realize in the event of a strike the Company will endure hardships in the loss of large orders and a still factory. We would much rather be a Neville Chamberlain than a Hitler. France and England have been forced to take up arms against the insanity of Hitler because he wishes to dominate and not deal just and fair with the people of the world.

"In like manner the union demands that the Western Cartridge Company be fair and just with their employes by granting them a ten per cent increase to employes on a piecework and hourly rate basis to offset living conditions in the Alton-Wood River district.

"The executive board demands a meeting with representatives of the Company, Friday October 27, 1939, at 2 P. M. at the cafeteria of the company's office of the Western Cartridge Company to again attempt to make a satisfactory settlement of the union's demand of September 12th through friendly negotiations."

Trial Examiner Ruckel: What was the date of that meeting?

Mr. McRoberts: October 27th.

Trial Examiner Ruckel: The date of the letter was

1753 October 12th?

Mr. McRoberts: The date of the letter was October 12th, referring to its prior demand of September 12th.

Trial Examiner Ruckel: Do the minutes refer to the letter?

Mr. McRoberts: And they demanded a meeting on October 27th, and the minutes from which I was reading were the minutes of October 27th, in which the union representative asked Mr. Bassett if the Company would at this time meet the union's demands of September 12, 1939, and was advised the Company cannot at this time meet the demand of September 12, 1939, made by the union.

Thereupon a motion was made by union representative that the representatives of the company and of the union meet on November 3, 1939, to give further consideration to the demand, which was carried.

The Company then presented graphs showing increase in hourly rates for female labor, increase in average weekly earnings, reductions in hours worked, and a comparison of the cost of living with previous years.

A considerable discussion about the graphs and conditions in the Alton-Wood River district followed.

A similar meeting was held on November 7, 1939, attended by Mr. Dawson as one of the Company's rep-
1754 resentatives, at which Mr. Bassett, on behalf of the Company, stated the management of this Company, after due and deliberate consideration, regrets that they are unable to grant the demand of the union for a flat ten per cent increase in wages for hourly and piecework employes. This decision is made after examination of the many factories affecting business at this time; both domestic and foreign conditions which affect future business are so unsettled as to make a long range program impossible at this time. The Company is perfectly willing to consider this matter at any time any condition now existing is changed. We propose to continue to adjust such wage rates in occupations and individuals as are found by independent and collective investigations to be out of line with respect to others in the plant.

Mr. Peterson, for the Company, also stated a reason why the Company could not grant the request.

It was then moved by union representative, and carried, that the Company and the union each designate a representative to continue negotiations of the union's demand, and representatives for the union and the company were appointed.

On November 16, 1939, a similar meeting was held, at-

tended by Mr. Dawson as one of the company representatives. It was agreed that there be appointed a committee of representatives of the union and of the company
1755 to draw up a plan of rules and regulations of employes who report for work and are sent home due to lack of work, and the Committee was appointed.

It was then moved that the representatives of the company and of the union who had been negotiating with respect to the union's demand for increase in pay write a report to be written in the minutes covering the negotiations of the union's demands.

The Company then stated that the latest proposal of the union for a five per cent increase for all hourly and piecework employes would be taken into consideration, and a definite answer of "yes" or "no" will be given on November 24th.

It was then suggested that a plan be worked out whereby the maximum number of employes would be given an opportunity to work during the customary shutdown for holiday and inventory purposes.

On November 29, 1939, a similar meeting was held, attended by Mr. Dawson as one of the representatives of the Company; at which Mr. Haddleton, for the Company, and Mr. Wilmering, for the union, each read their separate reports pertaining to the course of the negotiations which they had carried on regarding the demand for ten per cent increase. Both of the reports were accepted and written into the minutes, and these reports show that these
1756 two separate representatives of the company and of the union had met on five successive meetings, on November 8, 9, 10, 13, 14, and had carried on such negotiations, each meeting last approximately two and a half hours, the details of the negotiations being set forth more specifically in the reports in the minutes.

There was then read the report pertaining to rules and regulations pertaining to employes who report for work and are sent home, due to lack of work, and the report was accepted by the company and the union.

It was then moved by union representative that should any grievance arise at any time pertaining to this document it should be brought before a joint meeting of the representatives of the company and the union. The motion was carried.

The document referred to is a one-page, three-paragraph document setting forth the regulations, signed by two representatives of the union and two for the company.

A discussion of world conditions and local business ensued.

On December 1, 1939, a similar meeting was held, attended by Mr. Dawson as one of the representatives of the Company. The representative of the union stated that, after serious consideration, the union at this time was willing to cancel the demand for five per cent increase
1757 for all employes on hourly and piecework basis if the Company will increase the Company's contribution in individual contracts now in effect at the Western Cartridge Company from six per cent to eight per cent for all employes desiring this change in their contracts. He was advised the Company would give consideration to this demand.

A similar meeting was held on December 30, 1939, attended by Mr. Dawson as one of the company's representatives, at which Mr. John Olin advised the meeting with respect to the activities of certain commissions acting on behalf of the French and British governments, discussed employment by the Company during the last world war, and the probable effect of continued warlike activities on employment at the present time.

He stated that the Company had been offered a contract to manufacture ammunition for Finland, which had been approved by the War Department and the Ordnance Department, and asked the committee of the union if they thought the Company should accept the order. The executive committee each personally expressed their opinion that all orders should be accepted by the Company that would increase employment and show a net profit to the company. An hour discussion of the Company's business and of prospective business ensued.

On January 12, 1940, a similar meeting was held,
1758 attended by Mr. Dawson on behalf of the company; at which the union asked that the company increase the Company's contribution to the individual contract from six per cent to eight per cent, which request was denied by the Company.

The Company representative stated that the figures

presented by the union pertaining to earnings and rates of pay of company employes are not correct and that other figures would be produced which would prove the incorrectness of the union's figures.

The Company representatives reported considerable work had been done in the last month on merit rating and the work would continue until the job was finished.

The union representative asked if the union could have a man work with the company's man on job analysis and merit rating of the employes, and was advised that the Company would consider such a plan.

On February 7, 1940, a similar meeting was held, attended by Mr. Dawson as one of the Company's representatives, at which the Company representatives reported with respect to the condition of business in a certain department of the Company.

The union asked if the Company would grant the union's demand for a two per cent increase in the Company's contribution to the individual contract; which was denied.

The union representative extended an invitation to
1759 the representatives of the company to attend a mass meeting to be held on February 26th, but was advised by Mr. Bassett, on behalf of the Company, that the officials of the Company would probably be unable to attend.

A union representative suggested that a representative of the union should be appointed by the president of the union to work with company employes on job analysis, and was advised that the Company would be willing to have a representative of the union do such work, and Mr. Wilmering was appointed.

Plans for the 1940 vacation were discussed, and it was suggested that a committee of union representative and company representatives consider said plans and present them to the combined group of representatives when finished, for approval.

Mr. Haddleton for the Company then stated that divisional agreements made between company representative and union representative should be included in the minutes; the suggestion was approved.

On March 13, 1940, a similar meeting was held, attended by Mr. Dawson as one of the representatives of the Com-

pany at which a plan of rules and regulations for vacation in 1940 was presented by the union and a vacation committee was appointed.

The Company advised that they would study the
1760 vacation plan proposed by the union and see if it was agreeable with the management.

A long discussion ensued pertaining to group insurance plan of hospitalization and surgical coverage of employes of the Company.

On March 22, 1940, a similar meeting was held, attended by Mr. Dawson as one of the representatives of the Company, at which it was agreed that the vacation committee would meet on Monday afternoon.

The union representative asked that women who did not receive one cent per hour increase in base rate be given a one cent per hour increase.

A discussion of group insurance for employes followed for approximately an hour.

A similar meeting was held on April 19, 1940, which Mr. Dawson attended as one of the Company's representatives. Mr. Dawson, on behalf of the Company, presented a detailed computation of distribution of annual earnings of male and female employes by divisions in the company in comparison with corresponding data from the reports of the United States Department of Labor. A discussion of the yearly earnings of the company's employes and employes of the navy here ensued.

Report was made with respect to the progress of the vacation committee.

1761 A similar meeting was held on May 3, 1940, attended by Mr. Dawson as one of the Company's representatives; at which Mr. Bassett, for the Company, suggested that the Company present to the union a list of items of business they desired to discuss and consider with the union, which was approved by all representatives.

It was also proposed that the company submit at the next meeting the proposed rules of procedure for union representatives and committeemen to follow in calling meetings with officials of the company during working hours and for handling grievances through foremen, and department heads, and so forth.

The Company was advised that Mr. Manuel Wiseman,

attorney for the union, and two other representatives would compose the union's committee on written agreements.

A similar meeting was held on May 17, 1940, attended by Mr. Dawson as one of the Company's representatives; at which a report of the vacation committee was read and approved. The vacation week was fixed at July 4th.

The Company announced that it would give the union a decision on a graded vacation plan next week, and it was moved that the eligibility rules and regulations presented by the vacation committee be accepted.

The proposed procedure for the handling of grievances and the calling of meetings was submitted by the
1762 Company and taken under consideration by the union's representatives.

A similar meeting was held on May 31, 1940, attended by Mr. Dawson as one of the Company's representatives; at which it was pointed out that the minutes of the preceding meeting had failed to include a matter relating to the grievances of three men in the machine shop regarding the matter of wage adjustments.

Mr. Evans: I move to strike that as immaterial.

Trial Examiner Ruckel: Motion denied.

Mr. McRoberts: The Company reported with respect to the amount spent by the Company on group insurance from 1936 to 1939 and the union representative asked the company produce bracket rates of pay now in effect for all male occupations so that a study of the rates could be made and any discrepancies corrected, and was advised that work was going on on this matter of job analysis and as soon as that job was finished the complete classification could be considered.

The union representative stated that the union should have some representation in determining the bracket rates of pay for employes of the Company.

The union also asked that job rates on female labor be increased in accordance with the base rates. The Company said they would consider the request.

A similar meeting was held on June 14, 1940, at-
1763 tended by Mr. Dawson as one of the Company representatives, at which Mr. Bassett, for the Company, suggested that each representative visit his own departments in his division before going into other divi-

sions, but that representatives might visit the different departments by making arrangements with their foremen or Mr. Haddleton.

The question of the number of female employes who have a job rate of pay was considered.

It was then agreed by all representatives what the eligibility regulations should be.

It was also agreed that at a future meeting all male labor bracket rates of pay in effect today shall be surveyed jointly by the Company representatives and the Union representatives, and that the Secretary of the Union should be given a copy of the bracket rates of pay now in effect.

On June 27, 1940, a similar meeting was held, attended by Mr. Dawson as one of the Company representatives, at which the borderline cases pertaining to vacation pay checks were discussed, and certain decisions made with respect to certain employes.

A similar meeting was held on July 19, 1940, attended by Mr. Dawson as one of the representatives of the Company, at which Mr. Bassett stated that he had received the union's demand for a general increase for all piecework and hourly rated employes, the demand referred to
1764 being a letter dated July 11, 1940, addressed to Mr. Bassett, general superintendent of the Company, signed by the Western Cartridge Employes Independent Union by Barclay Wilmering, Secretary-Treasurer, and reading as follows:

"The representatives of the Western Cartridge Employes Independent Union desire a meeting with representatives of the Western Cartridge Company at 2 P. M. in the cafeteria in the main office of the Western Cartridge Company on Tuesday, July 16, 1940. The union demands a ten per cent increase in rates of pay for all piecework and hourly rated employes of the Western Cartridge Company.

At that meeting, in response to this demand, Mr. Bassett stated the management does not feel a ten per cent increase is advisable at this time. The Company does not know what the Government will go under the mobilization act and we do not know what steps we have to take in order to cooperate in this present program of rearmament.

However, the Company is willing to adjust any rates which seem to be out of line with similar jobs in the plant. The union officials stated that due to present business and the prospect of future business in their opinion a general increase was in order. Mr. Bassett was excused, by consent of the representatives, so he could fulfill another engagement.

Then wage levels of company employes were com-
1765 pared with employes of other companies, the Company contending that their rates were as high or higher than corresponding companies.

A similar meeting was held on July 31, 1940, attended by Mr. Dawson as one of the Company's representatives. The matter of some 18 vacation pay adjustments was agreed upon.

Motion was made by Mr. Bassett, of the Company, seconded by Mr. Wilmering, for the union, that inasmuch as a great deal of constructive work has been done by this board, we desire to rededicate our efforts to a more constructive effort of collective bargaining, both from the standpoint of employes and the company, and to express our appreciation of the efforts made by the retiring members of the Board.

Two agreements were then signed by the Company and union representatives, one entitled "Conditions under which union representative may leave his work during working hours"; and the other "Procedure to call a meeting for collective bargaining."

Mr. Bassett then stated that the union's demands pertaining to increasing of job rates of pay for female employes will be taken care of as soon as we can get the necessary information together, if they are out of line with base rate of pay.

Mr. Evans, may it be stipulated that Mr. Dawson, if
1766 present, would testify that meetings were held as just described by me, that he attended such meetings, and that what I have stated correctly states, in substance, what transpired?

Mr. Evans: What he would testify?

Mr. McRoberts: Yes.

Mr. Evans: I stipulate to what, with the exception of August 11th, in which Haddleton was representative in lieu of Dawson.

Mr. McRoberts: Do I understand that you stipulate that Haddleton would so testify with respect to that meeting?

Mr. Evans: That is right.

Mr. McRoberts: Mr. Dawson not having been present at that one.

Mr. Evans: That is August 11, 1939.

* * * * * * *

S. R. IRISH,

called as a witness by and on behalf of the Respondent, having been previously sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. McRoberts) Mr. Irish, you testified in
1767 this hearing with reference to the total number of releases or terminations of employment during the year 1941, or up to the first eleven months of 1941. I believe that figure was something in excess of one thousand, and that included voluntary quits, did it not?

A. Yes sir.

Q. Have you, at my request, reanalyzed those figures to get the number of employes discharged during the year?

A. Yes sir.

Q. What is the figure?

Mr. Evans: Objection; immaterial.

Trial Examiner Ruckel: What is the materiality of it?

Mr. McRoberts: The point is simply this, Mr. Examiner, out of a large number of discharges here are five, I think, that are being complained of, and the only theory as far as I understand the evidence on which anyone connects these discharges with union activities is that they followed union activities. There is no direct evidence of any discharge because of union activities.

Trial Examiner Ruckel: There will be no evidence to show how many of these were union men, or the proportion which that bears to the total union membership as compared to nonunion membership.

Mr. McRoberts: No, but I think if we do show out of a very large number of discharges there are only a
1768 few, that answers the question for what it is worth, and I think it is material.

Trial Examiner Ruckel: Objection sustained. You may make an offer of proof.

Mr. McRoberts: I offer to prove by this witness, if permitted to testify, he will testify the total number of employes discharged between January 1, 1941, and December 20, 1941, was 67 employes, and the total number of employes laid off during the same period was 87. Is there an objection to the offer of proof?

Mr. Evans: I objected to the question and the offer of proof merely recited it.

Mr. McRoberts: Are you renewing the objection to the offer of proof?

Mr. Evans: I do not have to.

Mr. McRoberts: If there is no objection to the offer of proof, I take it is is admitted, isn't it?

Trial Examiner Ruckel: No, the objection is to the question and the objection was sustained. You made your offer.

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1774 GEORGE LOUIS DAWSON,

called as a witness by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. McRoberts) Will you state your name, please?

A. George Louis Dawson.

Q. Where do you live?

A. 911 Logan Street, Alton.

Q. Where are you employed?

A. At the present I am employed by the St. Louis Ordnance plant, St. Louis, Missouri.

Q. That is the United States Cartridge Company?

A. Yes sir.

Q. What position do you hold there?

A. Office general manager.

Q. The United States Cartridge Company is a wholly owned subsidiary of the Western Cartridge Company, is it not?

A. That is correct.

Q. When did you become connected with the St. Louis Ordnance Plant or United States Cartridge Company?

A. Very early in January 1941.

1775 Q. Prior to that time were you with the Western Cartridge Company?

A. I was.

Q. For how many years?

A. My employment dated from 1909, with several interruptions. It had been continuous, however, since November 1, 1927.

Q. What position did you hold with the Western Cartridge Company before going to the United States Cartridge Company?

A. From 1927 to 1929 I was a research engineer; from 1929 to 1936 I was superintendent of metallic ammunition; and from 1936 until the fall of 1939 I was personnel manager, and from 1939 until a year ago I was industrial counselor.

Q. Mr. Dawson, what was your first contact with the Western Cartridge Employes Independent Union, your personal contact with them?

A. The first time I met anyone who was identified with the Western Cartridge Employes Independent Union was sometime in August 1937.

Q. What was the occasion of your first contact?

A. That was when a meeting was held in the office restaurant.

Q. Between representatives of the Company and representatives of that union?

A. Yes, sir, that is correct.

Q. Can you fix the date of that first contact on your

1776 part with the independent union?

A. From a note that I have from records prepared by me it appears it was July 29, 1937.

Q. Briefly, what was the subject of discussion at that meeting?

A. As I recall, that was a meeting in which several men, with their attorney, representing the newly formed organization which they called the Western Cartridge Employes Independent Union, met with officers of the Western Cartridge Company and discussed their organization with respect to the Company; they made statements they

now represented a majority of the employes of the Western Cartridge Company and demanded recognition.

Q. Who was the attorney for the independent union to whom you refer?

A. Mr. Manning of Wood River.

Q. Following that meeting, did the independent union submit to you any evidence as to their representation of your employes?

A. Yes, they did. At that meeting the Company representatives demanded evidence of the membership which the Union claimed to represent, and sometime between July 29th and August 12th evidence was submitted to the Company, consisting of a large number of membership cards, which were checked by the Company and which were found to total 2617.

1777 Q. What percentage of your production and maintenance employes at the East Alton plant did that number represent at that time?

A. At that time that represented 85 per cent of the total number of production and maintenance employes at the plant.

Q. Were the cards which were presented to you substantially in the form of Board's Exhibit Number 4, except, of course, for the date, which is 194.. on that exhibit?

A. I believe they were substantially the same.

Q. Were you also furnished with a list of the membership of the union by divisions, showing the name, address, membership number and payroll number?

A. I should say that at the time we were presented with the cards we were also presented with printed booklets which were the constitution of the Union, and in the printed booklet was a division of departments within the plant. In fact, there were six such divisions. Also transmitted to us was a list of the members who were represented in each of those six divisions.

Mr. McRoberts: You had better identify this book.

(Said book was thereupon marked, for identification, "Respondent's Exhibit Number 25").

Q. Mr. Dawson, I will show you what purports to be minutes of the Western Cartridge Employes Independent Union of East Alton, Illinois, and direct your atten-

1778 tion to certain pages of those minutes that appear to be lists of members in the divisions, giving names,

addresses, division and payroll numbers, and ask you whether the lists which were furnished to you were substantially the same as those lists that appear in the minutes?

A. The lists given us were similar to this list.

Q. Following the meeting of July 29th did you attend other meetings on behalf of the Company, as a representative of the Company, with representatives of the Independent Union?

A. Yes, I did.

Mr. McRoberts: Off the record.

(Discussion, off the record)

Trial Examiner Ruckel: On the record.

Q. When was the next meeting which you attended with representatives of the Union?

A. The next one after July 29th was on August 12, 1937.

Q. At that meeting what transpired?

A. At that meeting both the Company representatives and the Union representatives signed a basic agreement which had been prepared jointly by the Company's attorney and the Union's attorney.

Q. The Company's attorney in that matter was Senator George H. Williams?

A. That is correct.

Q. The Union's attorney was the same Mr. Manning
1779 who you mentioned before?

A. That is correct.

Q. I will show you Board's Exhibit Number 10 and ask you if that is a photostatic copy of the agreement to which you refer?

A. This is a photostatic copy of the agreement referred to.

Q. Following that meeting on August 12, 1937, did you attend, as representative of the Company, other meetings with representatives of the Independent Union?

A. I did. On August 19, 1937, there was a meeting with representatives of the Independent Union that I attended on behalf of the Company.

Q. Will you summarize what took place at that meeting?

A. Demands from the Union were presented for fifteen per cent increase in wages for all employes; demands for vacation with pay; employes with two years or more serv-

ice to receive one week vacation, with pay, and those with five years or more two weeks vacation, with pay.

It was also demanded that pay days be changed from twice a month to every second Friday, the theory being the people could do so much better with their pay checks if they got them on Fridays rather than the 1st and 15th of the month.

Discussion was carried on on these demands and minor grievances as to differentials in rates between men
1780 working in similar capacities on various jobs received considerable attention.

Q. (By Mr. Evans) Is that the classification business that has been referred to throughout the minutes for several years?

A. That was the beginning—perhaps I should state at this time that was the beginning of joint investigation between Union representatives and Company representatives to analyze jobs and as a result of that analysis to place the pay brackets which were fairly representative of the relative values of each job as compared to every other job. At this meeting on August 19th the groundwork was laid for further studies along that line.

With respect to vacations, the Company expressed a sympathetic viewpoint, but there were difficulties anticipated if the demands of the Union were allowed, because in the summer time the months of July and August represent big production for commercial ammunition, and it was suggested that a compromise might be reached wherein the week of July 4th would be vacation time and we would thereby lose the fewest working hours.

With respect to wage increases, the Company pointed out that a general increase had been granted on December 15th, 1936, and a further general increase was granted on April 1, 1937; the wages rates at that time were
1781 higher than other companies in the same industry, and the Company asked further time to make comparisons.

Q. (By Mr. McRoberts) In that connection what position did the representatives of the Union take?

A. The Union representatives maintained that production per man hour had been increased over that obtained several years before and that they believed the increase in

production would balance the extra cost due to further increases in wages, and the management agreed to investigate and compare the production per man hour with that obtained several years before.

Q. What did this discussion develop as to employes and committee members on the wage question—what position did they take?

A. It was the opinion of the employes' representatives that they individually felt wages were now below the standards of other industries in this territory.

Q. Is that substantially what took place at that meeting?

A. Yes, it is.

Q. What was the next meeting that you attended on behalf of the Company with representatives of the Independent Union?

A. There was another meeting on August 30, 1937, at which there was further discussion of the points raised at the previous meeting by the Union representatives, and there was further organization work done with re-
1782 spect to the facts that need be assembled to intelligently discuss the demands of the union.

Q. After that when was the next meeting between representatives of the Company and representatives of the Union?

A. A similar meeting was held on September 7th, 1937.

Q. Briefly, what was the subject of discussion there?

A. At that meeting it was just a continuation of the subjects discussed at the August 30th meeting.

Q. What was the next meeting that you attended on behalf of the Company?

A. On September 10th, 1937, there was another meeting.

Q. Briefly, what occurred at that meeting?

A. The Company stated at that meeting that they were not unfriendly to the union and they asked that there be a more understanding attitude on the part of the Union representatives as to the principles involved in operating of the business, and that there be a less arbitrary position on the part of the employes, in making demands and expecting immediate action on them.

At that meeting the Union representatives requested the Company to establish bulletin boards for the use of the Union in supplying information to employes of the Com-

pany on Independent Union matters. This request was denied.

There was a general discussion on wage rates, and at that time it was brought out that due to the general
1783 increases referred to, which were flat increases of cents per hour and were not on a percentage basis, it developed that many of the occupations in the plant were definitely out of line with respect to other occupations. For example, a man whose pay was 50 cents per hour and received a 5 cents per hour increase had received an increase amounting to 10 per cent; whereas another man at $1.00 per hour, with a five cents per hour increase, had received but five per cent increase.

There was further discussion showing the need of revaluation of the relative importance of the various occupations.

With respect to the changing of pay days, the Company had found out that it would cost six thousand dollars per year to change the pay days from twice per month to once every two weeks.

Nothing definite was decided at that meeting.

The Company had figures to present which showed that it would cost the Company $66,000.00 to grant one week vacation to those employes for which a vacation had been demanded by the Union.

It was suggested by Union representatives that they would like to hold meetings in the plant for the purpose of organizing the employes into their Union. That request was denied.

1784 Q. Is that substantially what took place at that meeting?

A. Yes sir.

Q. You have been referring, Mr. Dawson, with respect to several of these meetings, to notes which are not minutes, signed jointly by the Company and the Union?

A. That is correct.

Q. When was the next meeting that you attended, Mr. Dawson?

A. The next meeting was September 15, 1937.

Q. Briefly, what occurred at that meeting?

A. The Company representatives discussed with the Union representatives the matter of flat wage increases

which had been demanded by the Union. The Company took the position there was no necessity or justification for flat wage increases at that time, but suggested that the Union had proposed a wage increase in order that they might establish prestige among the employes. The Company felt that flat wage increases were not desirable; that our standard of wages was equivalent to those of other industries. However, when men were transferred from one job to another they should always receive the rate of pay that went with the new job.

Going back to complete my thought on the transfers from one job to another, it was proposed that a bureau or committee be established to study the conditions of jobs and to clarify wage rates, to the end that a report could be submitted which the Union would agree to. That
1785 is to say they would take part in assembling this. There were complaints brought into this meeting.

Q. Those were a number of individual complaints that had been discussed, is that right?

A. That is correct; and procedure was established as to how to bring those complaints into a meeting.

The Company announced that they would grant the week's vacation with pay, probably around Labor Day of 1938, because the vacation season had already passed for 1937; and the Company agreed to change the pay days which had been requested by the Union, even though it cost the Company six thousand dollars per year extra to run the extra pays.

The question of checkoff for union dues was brought up at this meeting, and was refused at that time. It was, however, left open for further consideration.

The Union representatives requested a closed shop policy wherein all employes of the Company would be required to join the Independent Union. This was definitely turned down by the Company.

Q. Is that substantially what took place at that meeting?

A. Yes.

Q. (By Trial Examiner Ruckel) Before we get too far away from it, shouldn't the minutes of the meeting of September 7th, which you have used to refresh your recollection, refer to Mr. Olin's expressing the friendly atti-
1786 tude of the Company and asking for a more understanding attitude and less arbitrary position on the

part of the employes? You testified the attitude of the Company was not unfriendly?

A. Yes sir.

Q. This I think is more correct.

A. Mr. Examiner, I have not finished it exactly.

Q. There is a slight difference between expressing the friendly attitude and stating the attitude was not unfriendly. This last meeting you have testified concerning September was what date?

A. September 15th.

Q. (By Mr. McRoberts) Following that meeting on September 15th what was the next meeting which you had?

A. We had a meeting on October 7, 1937.

Q. Briefly, what occurred at that meeting?

A. The question of checkoffs for union dues occupied the early part of this meeting. The Company stated the only way they would accept the proposition to check off union dues would be on the standard wage assignment form then used for various other purposes in the factory, which wage assignment form gives the employe the right to revoke the wage assignment at any time they see fit.

The union asked that an announcement be made that one week vacation, with pay, would be granted in 1938, and pay days changed as previously agreed.

1787 The union requested that a bulletin be prepared, over their signature, and distributed throughout the plant.

Q. What position did the Company take on that?

A. The Company took the position that was not a sensible way to handle the matter; that it was not a company problem and the union should inform their members through their own channels.

There was further discussion at this meeting with respect to job classifications, work on which had been started.

Q. And in which representatives of the union had been participating?

A. That is correct. This work that had been started was participated in by the Union representatives in analyzing jobs. The union representatives asked for some kind of a bulletin board. There was considerable discussion on this question. As a result of this meeting it was decided

that the company would not grant the use of a bulletin board, but the union would have to continue to prepare their own bulletins.

The change in payroll dates requested at previous meetings was to become effective this month.

Q. Is that substantially what occurred at that meeting?

A. Yes sir.

Q. When was the next meeting that you attended with representatives of the union?

1788 A. On October 28th, 1937.

Q. Briefly, what took place at that meeting?

A. The early part of the meeting was taken up with discussion of job classification and analysis. There was also discussion between the Union and the Company representatives with respect to reduction in forces. I might say beginning with the fall of 1937 and carrying through until well into 1938 there was a slackening off of business activities and it became necessary to reduce the force at the East Alton plant, and this discussion was with the Union representatives, notifying that such reduction was imminent.

Q. The discussion had to do with the question as to whether you should lay off a large number of employes and keep the remaining ones on full time, or shorten the hours and keep more employes at work?

A. That is incorrect. It was a question of whether to share all work there was available with all those then on the payroll or whether reductions in forces should be made. The Union took the position that the hours and rates should be kept level for those who were kept in the plant, and that the extra or surplus should be laid off. In other words, they did not favor sharing the work.

At the conclusion of this meeting the union representatives were informed that the wage and job adjustment program, namely, job analysis work would be fin-

1789 ished and sent to the joint committee for comment just as soon as possible.

Q. When was the next meeting that you attended, Mr. Dawson?

A. There was a meeting on December 5, 1937.

Q. In general, what was the subject of discussion there?

A. Further discussion of the job classification and wage brackets for occupations.

Q. When was the next meeting there?

A. The next meeting recorded is that of March 8, 1938.

Q. What was the subject of discussion there?

Mr. Evans: That is already covered by stipulation.

Q. The next meeting which you attended was on March 8th, 1938?

A. That is correct.

Mr. McRoberts: The subject of discussion at that meeting has already been covered by stipulation yesterday.

Q. (By Trial Examiner Ruckel) There is one question I want to ask: Referring to the meeting of September 10th the minutes speak of the individual contract and the Company's attitude that it would not do anything to invalidate those contracts with its employes, and discuss the relationship of those contracts apparently to the contract which the independent was asking, and then the minutes go on to say: "Also discussed in a general way the probability that an injunction could be secured if any action was taken by outside parties which would imperil present satisfactory operations of these contracts". I take it that refers to the individual contracts?

1790

A. It does.

Q. What outside parties were had in mind as presenting any possibility of interfering with these individual contracts?

A. I think that is a general statement, Mr. Examiner.

Mr. McRoberts: That was made by Mr. Olin, I believe, according to those minutes.

Trial Examiner Ruckel: Yes.

Mr. McRoberts: I have Mr. Olin here to testify in regard to those individual matters, and that is the reason I did not go into it with this witness.

Trial Examiner Ruckel: The statement was discussion was had on this matter.

Mr. Evans: May I ask a question?

Trial Examiner Ruckel: Yes.

Q. (By Mr. Evans) Was it at that time the C I O was organizing the plant and for some months prior thereto had been active in passing out leaflets and such as that?

A. I think for a year prior to that time there had been throughout the United States a series of sitdown strikes, coercion and intimidation, wherein people were prevented from coming to work when they wanted to, and probably that is what was meant.

Q. In other words, you mean the C. I. O.? You
1791 stated the C I O was organizing in your plant?

A. I say there had been organizing, and I do not identify it. As a matter of fact, I believe both the C I O and the A F of L had been active for a year prior to that in the automobile industry.

Q. We are talking about your plant here.

A. There had been no activity at our plant, no sir, to my knowledge at that time.

Mr. Evans: No further questions.

Q. (By Mr. McRoberts) The reports and these minutes—these notes which you have referred to here are notes which were prepared by Mr. Peterson, treasurer of the Company, were they not?

A. Yes sir.

Q. They are not your notes or memoranda?

A. Part of them are.

Q. The memoranda of the dates of various meetings?

A. Yes.

Q. And the brief statement as to the discussion, are in your handwriting?

A. And the tabulation of the cards and membership is mine.

Q. You made a tabulation on what date showing the membership of the union and its percentage of employes?

A. On August 4, 1937.

Q. As of the payroll date of—

1792 A. As of the payroll ending July 15th, 1937.

Q. When your computation showed 85 per cent were members was that 85 per cent of the total number of your employes or 85 per cent only of the eligible employes?

A. That was 85 per cent of the employes who were eligible as set out by the constitution of the Independent Union which was presented to us. It excluded from membership foremen and certain clerical workers.

Q. (By Trial Examiner Ruckel) And these minutes as a whole were kept by who—minutes of the meetings?

A. Until the early part of 1938 there were no really accurate minutes kept. After that time, however, minutes were made by the Secretary of the Union and were signed by all parties attending the meetings.

Q. There were some minutes kept before 1938 though?

A. They were not as complete—

Q. Who kept them, irrespective of their completeness?

Q. (By Mr. McRoberts) These notes which you refer to, which we call minutes, was it Mr. Peterson who kept the notes?

A. Mr. Peterson kept notes of the meetings attended by him.

Q. And it is from those notes you have testified with respect to the meeting of August 19, September 10, September 15, October 7, and October 28th? Is that correct?

A. That is correct.

1793 Q. Mr. Dawson, in the joint minutes signed by representatives of the Company and the Union, covering one or more meetings subsequent to March 8, 1938, there is a reference to a request of the Independent Union to be furnished with certain lists of all of the employes of the company; the minutes do not show what was done with respect to such request. What was done, Mr. Dawson?

A. Well, on every occasion—and there were many occasions when the Union requested a list of the employes—that request was denied by the Company.

Q. Was the Independent Union during the time you were dealing with it ever permitted to have any meetings on Company property except when it was meeting with representatives of the Company for purposes of collective bargaining?

A. At no time that I know of.

Q. Did the company at any time furnish any financial support to the independent union?

A. No sir.

Q. Mr. Dawson, there has been some testimony in this hearing with respect to the Company's mailing system being used to distribute some notices of delinquent dues of the Independent Union. Can you tell us what you know about that matter?

A. You wish to know the operations of the factory mailing system?

Q. Not the operation of the factory mailing system,
1794 and that has been testified to by other witnesses, but was permission ever granted by you, or anyone else, on behalf of the Company, so far as you know, for the use of the factory mailing system by the Independent Union?

A. No. On the contrary, we denied it.

Q. Did they request that permission?

A. They did.

Q. Did you find some union matters had been sent through the Company mailing system?

A. I found, after having been denied the use of the factory mailing system on one occasion, the union's material was mailed through our factory mailing system, whereupon I instructed our then mail clerk to be on the alert for any large mail and determine where it came from, and if it came from the union to hold it and notify me, and on two occasions I am certain of I was so notified and the material which was being mailed out by the union through our mailing system was returned to them, with instructions they could not do that.

Q. You used the word "large" there, Mr. Dawson—any large mail or mailing—just what did you mean by that term?

A. As mail comes into the central mail room it has a rubber band around the particular package which has been accumulated at each one of the stations. The mail clerks know about the normal amount of mail from
1795 any station, and if a larger amount than normal comes through then some activity unusual is going on in or around that station.

Q. You refer to a large volume?

A. A large volume of mail, yes.

Q. Mr. Dawson, did the Independent Union request the privilege of having a business agent with privileges of going through the plant?

A. Yes, they did.

Q. Was that privilege granted or denied?

A. That privilege was denied.

Q. Did the Independent Union ask the privilege of hav-

ing their secretary go through the plant for the purpose of collecting union dues?

A. I don't remember of them naming their secretary as being the one they would like to have collect dues. They did, however, request permission to collect dues.

Q. Was that granted?

A. That was not granted.

Q. Mr. Dawson, there is some evidence in the record with respect to the Independent Union posting notices on Company bulletin board and around the plant in different places; what instructions were given with respect to permitting those notes to stay up or to take them down?

Q. After permission to use the bulletin boards had been denied to the union there were instances in which
1796 they posted bulletins on the outside of the board.

Q. What do you mean by outside of the board?

A. The normal board is covered with glass, and a lock is provided, but it is quite easy to attach with a thumb tack a bulletin to the outside of the bulletin board. Our protection department and service department were instructed to remove any bulletins put on the outside of the board as quickly as they saw them.

Q. Do you know whether they complied with that instruction?

A. Yes, they did.

Q. Did you get reports from time to time of bulletins that were found there and taken down?

A. On many occasions bulletins were sent to my office which had been removed from boards.

Q. Mr. Dawson, did you at any time give instructions to the department heads in the production and maintenance departments with respect to union activity and the position which they should take in connection with any union matters or union activities on the part of their employes?

A. Dating from 1933, all of the supervisors were notified that there was such a thing as the N R A, and later the Wagner Act, and that at no time were they to advise, consult or coerce or express any opinions with respect to union matters to any employe.

Q. How were those instructions given, individually
1797 or in meetings?

A. You will recall during the period from 1929 to

1936 I was production superintendent and I received those instructions.

Q. What about the time when you were issuing instructions?

A. During the early time I was receiving those instructions and passing them on to my subordinates, and later I issued instructions to division superintendents and foremen. In the main that was done at foremen's meetings and it would be one of the subjects that was covered at our rather frequent meetings.

Q. Mr. Dawson, what instructions did you give with respect to inquiries which might be made by employes about union matters?

A. We had refrained in the years of 1936 and 1937 from issuing many printed instructions, because the authorities were contradictory and it was very difficult to keep abreast of what was correct with respect to labor legislation, and what not; so it was thought those rather complicated matters could be handled best by one department, and rather than trying to make a lot of labor advisers out of the foremen, that any inquiries from employes should be referred to one office, and that one office was mine.

Q. Were such instructions given?

A. They were, yes.

Q. Following such instructions, were employes from
1798 time to time referred to you?

A. That is correct.

Q. On how many occasions?

A. Dozens of cases.

Q. From different parts of the plant?

A. That is right.

Q. What types of inquiry would these be?

A. They were very simple ones, in most instances. The employe goes to the foreman and says "Now, the people I am working with tell me I have to belong to the union. Should I join that union or should I not?" Whereupon the foreman says "That is a matter that I am not permitted to discuss with you, and for fear that I might say the wrong thing about it, we have one department in this plant that will tell you what your rights are. You go over to Mr. Dawson's office", and they would come over and repeat that question to me.

Q. What would you tell them?

A. I would tell them it was their privilege to belong or not belong to any union, just as they saw it; it had no connection whatever with their job; they were not required to belong to a union, and, on the other hand, if they chose to belong to a union that was perfectly all right, too; the Company was strictly neutral.

Q. Mr. Dawson, from who did you in turn receive
1799 your instructions as to what the Company's position was and should be and would be in matters of this kind?

A. From the officers of the Company.

Q. By that you mean Mr. F. W. Olin, Mr. John Olin and Mr. Spencer Olin?

A. That is correct.

Mr. McRoberts: I think that is all.

Trial Examiner Ruckel: We will recess for ten minutes.

(Recess then had)

Q. (By Mr. McRoberts) Mr. Dawson, I have one further question: With respect to these instructions that you gave to various supervisory employes, was it ever reported to you or did you ever hear of any instance in which these instructions had been violated?

A. I never heard of any such instance.

Q. No reports to you of any complaint made by any employe during the time you were with the Western Cartridge Company where any supervisory employe had discussed union matters or interfered with employes' connection with union matters?

A. There were none.

Mr. McRoberts: That is all.

Cross-Examination.

Q. (By Mr. Evans) Did the Company receive any communication from the Union prior to the meeting of July 29, 1937, about which you testified?

1800 Trial Examiner Ruckel: The Independent you mean?

Mr. Evans: Yes, the Independent.

A. There were no communications, to my knowledge, prior to a letter addressed to Mr. John Olin, which resulted in the meeting of July 29th.

Mr. McRoberts: For your information, I expect to cover

by other witnesses the first contact with the union and the negotiations prior to July 29th.

Mr. Evans: He may know about that.

Mr. McRoberts: Yes, but I want to let you know there will be testimony covering that point.

Q. Showing you Board's Exhibit number 8, for identification, is that a copy of the letter to which you just referred?

A. I believe that is it. My only knowledge is a letter was received by Mr. John Olin. It may have been addressed to Mr. F. W. Olin, and as a result of that letter the meeting of July 29th was held.

Q. After the letter of July 23rd, Board's Exhibit Number 8, which you just identified, did you see Board's Exhibit Number 9, a letter dated July 26th, setting forth specific demands of the independent union?

A. I have seen this, or a similar sheet before, and it was probably at this time stated, just prior to—

Q. Just prior to the meeting of July 29th?

1801 A. I believe so.

Q. Tell us what was said about the point of recognition at that meeting of July 29th, 1937?

A. You wish to know the language used in asking for recognition?

Q. What was said, and by who, as near as you can remember it.

A. As I recall, the Company was represented by our officers, namely, Mr. F. W. Olin, Mr. J. M. Olin and Mr. S. T. Olin, Mr. B. E. Bassett, and myself, and perhaps Mr. J. M. Peterson was also present. The union was represented by their attorney, Mr. Manning, and by their officers, and as I recall—

Q. Was Manning present? I will refer you to the notes—I beg your pardon. These don't show that.

Mr. McRoberts: There are notes, just brief ones, on that July 29th meeting.

Q. Did Manning attend any of these meetings about which you testified?

A. Mr. Manning attending the meeting on July 29th, and the Company was also represented by Senator Williams. Mr. Manning acted as spokesman for the union and stated the union, representing a majority of the employes of the

Western Cartridge Company, desired recognition as the sole collective bargaining agent.

Q. Go ahead.

1802 A. Well, as I recall, the union was asked at that time for some evidence that they represented the majority of the employes, and the Company was told that the evidence was available and would be transmitted to the Company; and, as I further recall, the union representatives were told they should transmit that information to me, that I should check the signatures and names to see if the persons who were represented by the union were employes of the company.

Q. Was anything said concerning the unit?

A. I do not recall if it was at that meeting or a later meeting that the question of the constitution of the union came up. It is possible it was discussed.

Q. Do you know what I mean by unit?

Mr. McRoberts: The collective bargaining unit. Do you know?

Q. I mean what employes were included within this terminology of exclusive bargaining representative?

A. Of course, at that time we did not know, nor could the union tell us, just what departments they claimed the majority of employes in. They claimed as a matter of fact to represent the employes of the entire plant.

Q. In other words, no unit was specified except the plant?

A. The entire plant, yes.

Q. Who checked the cards?

A. I did.

1803 Q. You did personally?

A. Yes sir.

Q. What unit did you use to ascertain the percentage of 85 per cent?

A. The entire plant.

Q. You included office employes?

A. I do not recall that there were any office employes.

Q. Did you exclude any departments where the employes were not represented by cards in the Independent Union?

A. I am not certain I understand that question.

Q. Were there any certain departments for which no cards were submitted by the Independent Union?

A. If I might refresh my memory from a tabulation. I believe all the departments were represented wherein there were hourly rate employes.

Q. You are talking now about divisions as set up by the Independent Union in its constitution?

A. Divisions and departments of the plant.

Q. Were there any parts of any of the divisions which the company considers as departments for which no cards of the Independent Union were submitted?

A. I believe not.

Q. You have no separate tabulation on that point, have you?

A. No, I have not.

Q. (By Mr. McRoberts) Mr. Dawson, do you want to
1804 read into the record the tabulation by the six divisions by the union?

A. Yes, I will.

Mr. McRoberts: If you have no objection.

Mr. Evans: I do not see that it is pertinent.

Mr. McRoberts: I do not see the question of yours is pertinent.

Mr. Evans: It is a preliminary question to find out whether he eliminated departments from the total percentage where there were no cards submitted. He apparently has no separate tabulation and cannot remember it specifically.

Mr. McRoberts: I will do it on re-direct examination.

Q. Did you check the cards alone?

A. I spotchecked the cards. I did not check all of the cards.

Q. How did you spotcheck the cards?

A. Against our personnel folders on each and every employe, which folders are arranged alphabetically and contain, among other things, the signature of the employe.

Q. By spotchecking you mean you checked a certain percentage of the cards?

A. A little better than ten per cent, I would say.

Q. What else did you do?

A. Then I checked every card to see that that person was on the payroll of the company.

1805 Q. You mean to see if the person bearing the name on the card was one on the payroll?

A. Yes.

Q. What payroll did you use for that purpose?

A. I used our payroll which was prepared semi-monthly.

Q. What payroll did you use?

A. The one on July 15, 1937.

Q. What else did you do in making the check?

A. As I now recall, the constitution of the union was handed to us at that July 29th meeting, and in that constitution, which was a printed booklet, were set out six divisions of the union, which six divisions encompassed all departments in the plant, they having been arranged with relation to the nature of the work done in the various departments. For example, one division included brass mill and casting operations. Another one—

Q. The divisions were set up.

A. Then I broke these cards down by numbers into the various divisions which had been set up in the constitution to determine if the representation claimed by the union constituted a majority of each one of the divisions set up by them.

Q. What else did you do?

A. From that I compiled a list of the total number of applications and totaled the number of employes in
1806 each of the so-called divisions, and from that I determined that every division had a majority of union membership, and that the ratio of union members of employes in the entire plant was 85 per cent.

Q. You took the division number as appeared on the application?

A. No, I checked that as against the occupation and department of the employe whose card was handed to me. That was checked against our payroll.

Q. How did you separate the cards according to divisions?

A. We have a payroll which is arranged by departments. When I check off from the card the person's name on the payroll it automatically is classified in that particular department, so it is only necessary for me to count the number of checkmarks.

Q. You arranged the departments then according to the divisions?

A. Correct.

Q. Do you still have that payroll?

A. I don't have it, no sir.

Q. Do you know where it is?

A. It is possibly in the records of the payroll department. For that purpose I would merely borrow the current payroll from the payroll department and check against it.

Q. What else did you do?

1807 A. I transmitted the tabulated information to the officers of the company, saying that I had checked the cards submitted, and I believed they did represent a majority of the plant, and the distribution was shown on the sheet I handed them.

Q. Did you eliminate any cards for any reason?

A. I believe there was a half a dozen cards or so, on which the signature was not clear.

Q. Were there any cards submitted bearing names that you did not find on the payroll?

A. No, there were not.

Q. Were there any cards submitted which bore printed signatures or names?

A. No sir.

Q. They were all written out?

A. Yes, they were all written out.

Q. In longhand?

A. Yes.

Q. They were not printed in pencil?

A. No sir.

Q. Did you check on the authenticity of any of the signatures other than the manner in which you have specified?

A. Only in the manner I have specified.

Q. Did you check on where or under what circumstances the cards were obtained?

1808 A. No, I did not.

Q. Did you have anything to do with the preparation of the basic agreement?

A. No sir.

Q. Which is the agreement entered into on August 12th?

A. I did not.

Q. Were you consulted about it in any manner?

A. I was consulted about some of the subject matter which later appeared in the basic agreement.

Q. With whom did you discuss the matter?

A. In conference with company executives, the corporation's officers, and Senator Williams, the attorney.

Q. Did you ever go over any proposals submitted by the Independent Union before the basic agreement of August 12th was signed?

A. No.

Q. At this meeting on the 10th of September it appears that there were in addition to the six divisions representatives approximately 45 other employes who were advisory committee? Is that correct?

A. That is correct, yes.

Q. Do you know how that came about these extra 45 persons were brought into the meeting?

A. Yes, I do recall; that was at the request of the union representatives; that is to say, the division representatives.

1809 Q. And Mr. J. M. Olin made an opening talk, stressing the friendly attitude of the Company?

A. Yes.

Q. The notes also go on to say Mr. Olin asked for a more understanding attitude and less arbitrary position on the part of the employes; did he speak about the attitude of the employes as a whole?

A. Yes, I would understand it that way.

Q. The note continues that Mr. Olin discussed the status of the individual employe's contract and its bearing on the present negotiations; is that true, that he did so discuss the individual contract?

A. Yes, he did.

Q. Is it that the independent union was asking for substitution of a working agreement for the individual contracts?

A. I don't believe they ever asked for anything that would nullify or do away with the contracts.

Q. You were not present in the conversations which Mr. Williams conducted?

A. With Mr. Manning?

Q. Yes.

A. No, they were conducted at Mr. Manning's office and at Mr. Williams' office.

Q. Mr. Olin also stated at that meeting, according
1810 to the minutes, that the Company would not and could not do anything to invalidate or break these

individual contracts with its employes. Did he make such a statement?

A. I believe that he did.

Q. And the notes also state that Mr. Olin stated probably that an injunction could be secured if any action was taken by outside parties which would imperil the present satisfactory operations of these contracts; did he make such a statement?

A. I have heard that statement made on several occasions, that interference of any third person to prevent fulfillment of our contracts could result in an injunction.

Q. That you take it was the general position of your Company in regard to the individual contracts?

A. Or to any contract we may have, yes.

Q. The notes continue to state that Mr. Olin explained the Company's understanding of the fundamental agreement with the employes' union; is that the basic agreement?

A. I believe he referred to the basic agreement, yes.

Q. And read the agreement in full to the whole assembly; can you elaborate any further on the remarks he made concerning that basic agreement?

A. I believe he read the agreement that had been entered into between the Company and the Union, without comment.

Q. Individual contracts were then in force with
1811 practically all of the employes of the Company?

A. And had been for years, yes.

Q. Since about 1934?

A. Well, original use of the contracts dates back to 1915. There was an interval in the '20's and early '30's when they were not used.

Q. They had been used continuously since about the early part of 1933?

A. Yes.

Q. What part of 1933?

A. In July.

Q. (By Trial Examiner Ruckel) How do you fix the date as being in July?

A. Because I had then charge of that work and it was at that time we had to increase our clerical staff to sign so many contracts.

Q. (By Mr. Evans) Was there an attempt at union organization in that year?

Mr. McRoberts: Which year?

A. In 1933?

Q. Yes.

A. No, not to my knowledge was there any attempt. There was much industrial rest throughout the country, and the basis of our individual agreement was twofold. If you would like I can speak on that.

1812 Q. No, I do not particularly want to elaborate on that particular point. This industrial unrest was in part unionization?

A. I believe in part it was evidenced that it was the results of unionization.

Q. Was there any strike in the plant here in 1933?

A. There was not, no sir.

Q. Was there a partial strike?

A. No sir.

Q. Was there a shutdown of the plant?

A. No.

Q. Was there a large layoff of employes?

A. Nothing abnormal. Perhaps I should say the ammunition business is seasonal and several times each year operations are curtailed.

Q. When the contract was introduced were employes called into the office?

Mr. McRoberts: You mean these individual contracts?

Mr. Evans: Yes, I am talking about individual contracts.

A. Yes.

Q. They were interviewed by who?

A. By myself and my staff.

Q. Were you general superintendent at that time?

A. No, I was metallic superintendent, and I can only testify with respect to how they were handled in my

1813 division, which comprised about eight hundred people.

Q. You interviewed employes yourself?

A. Yes.

Q. And the employes signed the agreements in the office?

A. That is correct. They received a copy of the contract.

Q. Were they called in individually?

A. In groups from 4 to 12 in a group, in order that the contents of the contract could be explained to them, they could each be handed a contract, they could sit down and read the contract as long as they liked, and then if they wished to do so, they could sign the contract.

Mr. Evans: I move to strike the conclusion of the witness.

Mr. McRoberts: What conclusion?

Mr. Evans: They could sign if they wished.

The Witness: I told them that.

Q. (By Mr. McRoberts) Is that what they were told?

A. That is what they were told, yes.

Q. (By Mr. Evans) Were employes permitted to take contracts out of the office without signing them?

A. Yes.

Q. And did employes do so?

A. They did.

Q. And thereafter employes signed these contracts on an annual basis?

1814 A. The first contract was for a period of six months; thereafter they signed on an annual basis.

Q. Six months from the date of signing?

A. Yes, that is correct.

Q. At the time each employe signed a new contract he was asked to turn in the old contract?

A. Yes, that is correct.

Q. So that at this time as far as you know no employe has a copy of any contract except the current one?

A. There are many employes who have copies of the contract that they did not turn in, because in lieu of that we would accept the statement they had misplaced the contract and could not find it.

Q. (By Trial Examiner Ruckel) Did any employes refuse to sign the contract?

A. Some did, yes.

Q. What became of them?

A. There was no change in their status.

Q. They still remained employes?

A. Yes.

Q. (By Mr. Evans) How many such employes refused to sign?

A. Not many; possibly twelve or fifteen in the entire plant.

Q. Is there any way we can ascertain the names of those persons?

1815 A. I can name a few of them.

Q. What ones?

A. A man named Alexander; a man named Otto Ruevich, I believe was his name.

Q. These are persons who worked in your division?

A. Yes, I recall them. Later, however, there were only three who had not signed up the contract.

Q. Any others?

A. I don't recall their names.

Q. Is there any way we can ascertain their names?

A. We might look through the records of the Western Cartridge Company covering that period of time, and you might find some, if any.

Q. Was there any separate file kept of that?

A. It may be in the contract office.

Q. Returning again to the meetings about which you testified, the one on September 15th, in regard to the closed shop and dues checkoff, the notes indicate that this policy was definitely turned down by Mr. Olin, without any objections from the committeemen; is that true?

A. I recall that Mr. Olin refused to grant the checkoff. I don't recall that the union representatives made any comment about that refusal at that meeting.

Q. The notes do show that they didn't, as I stated, is that correct?

1816 A. That is correct, yes.

Q. You say these are Mr. Peterson's notes?

A. They are from Mr. Peterson's files; at this time I do not recall who prepared them.

Q. On the meeting of October 7th the minutes state that the first question before the meeting was brought up by Mr. Plumb, who asked for the privilege of having Mr. Sullivan meet the union officials in the plant when occasion arose and wanted to be sure he would be able to get a pass when requested; Mr. F. W. Olin agreed to this. Is that substantially what was said in that regard?

A. Yes, that is what happened.

Q. At that time isn't it true Mr. Sullivan was not an employe of the Company?

A. I believe on or about that time he had left the Company's service.

Q. That is Otis Sullivan, Secretary-Treasurer of the Independent Union?

A. Yes.

Q. And he left the Company's employ about October 1st to act as full-time secretary to the Independent Union, is that correct?

A. I believe that is correct.

Q. The notes continue to state that Mr. Plumb—Mr. Plumb was president of the Independent Union at that time?

1817 A. Yes.

Q. —then brought up the question of making deductions from paychecks for union dues; it was agreed that the only way the Company could be responsible for such thing was to have such deductions made on the authority of individual assignments, revocable at the will of the employe. Mr. Olin expressed himself as think this would give a better idea of who were real live union members and the union would be in a stronger position probably to have these assignments made by the members, and the Company would agree to make such deductions under such arrangement. Was that substantially what was said in that regard at that meeting?

A. That is the explanation that Mr. Olin gave the union members when he refused to give them the checkoff that they requested.

Q. Was that Mr. F. W. Olin?

A. That was Mr. F. W. Olin, yes.

Q. It was then brought out by Mr. Plumb, according to these notes, that it was becoming increasingly difficult for committee members to keep employes satisfied that proper attention was being given to reclassification of jobs and wage adjustments and wanting to know what the Company was actually accomplishing toward this end; is that substantially what Mr. Plumb said?

1818 A. I believe that is true, yes.

Q. Then you said that the Company was making every effort to finish this job of reclassification and wage adjustments, is that correct?

A. I believe that is correct.

Q. But you set no particular time when that study would be finished?

A. No, we didn't.

Q. There then ensued a discussion on the vacation plan and other matters, and then appears the statement that the committee members did not think that word of mouth in general meetings would best serve the purpose of disseminating information concerning the matters discussed at the meeting and they—referring to the union committee—still think that it could be covered by some kind of a bulletin; Mr. S. T. Olin said these group meetings would help spread authentic information, and this was discussed pro and con. The final idea was that more written bulletins on the part of the organization, put out by the union committee, after being scrutinized and approved by corporation officers as being correct and authentic, would do the best work. Was that substantially the discussion on the dissemination of this information?

A. I believe so.

Q. (By Trial Examiner Ruckel) Dissemination of
1819 information with respect to what?

A. To any agreements or actions taken at these meetings.

Q. At these joint meetings?

A. At these joint meetings. That has always been a question, of how do we tell the people what is taking place.

Q. (By Mr. Evans) After that meeting were such approved bulletins written and distributed?

A. As to the distribution I am not certain, but shortly after and beginning with that time we made it a practice to record everything we had agreed upon at the meeting and the union could have their copy and disseminate it through their channels as they saw fit.

Q. (By Mr. McRoberts) Their copy of what?

A. Of whatever agreements we had made and signed. You asked specifically about the vacation schedule, I believe.

Q. (By Mr. Evans) I said vacations and other matters were thereafter discussed. The notes indicate a number of topics which were discussed after that. Do you wish to refer to the notes?

A. Yes. On this occasion the subject under discussion about which a bulletin was requested by the union had to do with the vacation plan which had been agreed upon by

the company and the union representatives. The union representatives requested that a bulletin be distributed throughout the plant.

1820 Q. Then there followed discussion on various other points on that and the subsequent page and comes down to the statement there ensued a general discussion as to how to disseminate information among employes. Is it true this discussion followed other topics and then the problem came up along with the vacation bulletin as to how to disseminate information on these matters which were being discussed?

A. That is correct.

Mr. Evans: That is all, Mr. Examiner.

Trial Examiner Ruckel: Do you have any re-direct?

Re-Direct Examination.

Q. (By Mr. McRoberts) I have a question or two. Mr. Dawson, will you state—

Trial Examiner Ruckel: Cannot that be made an exhibit?

Mr. McRoberts: Yes, I am perfectly willing to.

Trial Examiner Ruckel: Rather than reading it in the record.

Mr. McRoberts: I was just going to read two columns, and I was not going into detail.

Trial Examiner Ruckel: All right.

Q. May I read in the record, Mr. Dawson, and you state if it is correct, the result of your comparison of the membership list of the union with the payroll list of the Company as of July 15, 1937:

1821 In Division Number 1, being the division according to the union constitution setup, total number of employes 746. Members of the union 668.

Division Number 2: Total number of employes, 490. Members of the Union, 413.

Division Number 3, total number of employes, 615. Members of the Union, 526.

Division Number 4, total employes, 439. Members of the union, 347.

Division Number 5, total number of employes, 380. Members of the Union, 323.

Division Number 6, number of employes, 407. Members of Union 343.

Total number of employes, 3077. Total members of union, 2617.

Referring to your memorandum you show certain other computations there of not members, and not eligible, and eligible and not members, and so forth; what do those mean?

A. The heading which shows the number of persons in each division, the division being that grouping set up by the union's constitution.

Q. (By Trial Examiner Ruckel) Those figures are what?

A. The figures Mr. McRoberts just read are the total number of employes on the payroll.

Q. (By Mr. McRoberts) And then the total number 1822 of members in the union in each division?

A. That is correct.

Q. And then following that you have a column showing "Not members"?

A. Yes.

Q. Is that the difference between columns 1 and 2?

A. That is the difference between 1 and 2.

Q. Of those who are not members you subdivide those further into ones who are not eligible and ones who are eligible and not members, is that correct?

A. That is correct.

Q. And you also show the number of members of the union with no contract?

A. That is correct.

Q. Mr. Dawson, why did you take up the old individual contracts of employes when you signed new ones?

A. Very often there was a change in dates and we consider the contract a very formal document, and when we would issue a new one which replaced the old one we wished to cancel it.

Q. These contracts contained an obligation on the part of the Company to make certain money payments, is that correct?

A. That is correct, yes.

Q. When you signed a new contract you would either

make those payments under the prior one or include them in the new one?

A. That is right.

1823 Mr. McRoberts: That is all.

Re-Cross Examination.

Q. (By Mr. Evans) The contracts themselves specified an expiration date, didn't they?

A. They did.

Mr. Evans: That is all.

Q. (By Trial Examiner Ruckel) Was the meeting of September 15, 1937, in which mention was made of the pass to be given to Mr. Otis Sullivan?

Mr. Evans: I think that was October 7th.

Q. It was October 7th, I believe. Mr. Sullivan, you say, left the Company shortly, or I believe you stated at that time had already left the Company to devote his time to the affairs of the independent union as secretary-treasurer?

A. Yes; on or about October 1, 1937.

Q. And you left the Company when?

A. I left the Company January 5, 1941.

Q. Had there been any change in the Secretary-Treasurer during that time?

A. Yes.

Q. When did Mr. Sullivan cease to be Secretary-Treasurer?

A. Of course, the union minutes would show exactly.

Q. If you know, approximately?

A. I think approximately August 1938.

Q. Who succeeded him?

A. I believe that Mr. Wilmering became Secretary-Treasurer.

1824 Q. Did he remain as secretary-treasurer up to the time you left the Company or did he have a successor?

A. He had a successor also.

Q. Who was that?

A. I believe it was Mr. Aughenbaugh.

Q. Was Mr. Aughenbaugh secretary-treasurer up to the time you left the Company or did he have a successor?

A. I believe he was secretary-treasurer at the time I left the Company.

Q. Did he and his predecessors, whose names now escape me, also have passes as did Mr. Sullivan while he was secretary-treasurer?

A. Mr. Sullivan did not have a pass. Mr. Sullivan was given permission to the plant and obtain a pass for an individual call at the plant as other people did.

Q. When he left your employ then he did not keep his pass?

A. He was treated exactly as any other non-employe would be treated with respect to passes.

Q. He did not have a badge that permitted him to go in and out at will?

A. No sir.

Q. When he wanted to go in he would go to the proper place in the plant and get a pass for that specific visit?

A. Yes, and would be accompanied by a guide.

Q. Did his successors, who you have named, also
1825 have that privilege?

A. They were employes of the Company.

Q. Did they have the privilege under escort of coming to the plant or of attending to their business in the plant when they were not actually working?

A. Under special arrangements, yes.

Q. How long did that practice continue, if you know? You say up to the time of your employment. I suppose you know nothing—

A. I know nothing since January 1941. The question as to when a union representative could go in the plant and where he could go was a matter of much discussion, and it finally ended in the preparation of minutes in our meetings stating just how the union representative could go to a department to investigate a grievance.

Q. Mr. Sullivan's privilege was not confined merely to the handling of grievances, I take it? The language of the minute refers to having Mr. Sullivan meet union officials in the plant when occasion arose. I presume that would be when he thought an occasion had arisen of some kind that justified his visiting in the plant?

A. On the permission given by Mr. Olin, which was a

general one, which, of course, instructed him to proceed in the regular fashion, to get a pass.

Q. Just one other question: You have referred to
1826 your spotchecking, I believe, of the signatures on the application cards in the independent with personnel records?

A. Yes.

Q. And your personnel records contain the signature of all employes?

A. They do, yes.

Trial Examiner Ruckel: No further questions.

Re-Direct Examination.

Q. (By Mr. McRoberts) Mr. Dawson, when I would understand whenever Mr. Sullivan would want to go in the plant to see any union official he would have to get a separate pass each time?

A. Yes.

Q. Good for that trip only?

A. Yes.

Q. And to see a certain person only?

A. That is correct.

Q. Who would have to issue those passes?

A. There were only five persons who could sign passes at the Western, Mr. F. W. Olin, Mr. J. M. Olin, Mr. S. T. Olin, Mr. J. M. Peterson or Mr. B. E. Bassett.

Q. That was during the time from 1937 to 1941?

A. Yes.

Q. To identify Mr. B. E. Bassett, what was his position with the Company at that time?

1827 A. He was general superintendent of the company.

Q. And Mr. Peterson?

A. Mr. Peterson was assistant treasurer.

Mr. McRoberts: I think the others have been identified.

Trial Examiner Ruckel: Any further questions?

Q. (By Mr. McRoberts) Mr. Dawson, Mr. Aughenbaugh testified, page 165, when the Company gave a two per cent bonus to the employes that Mr. Dawson helped Mr. Chapman to make out a bulletin to put on the board before the Company came out with it, to give a chance so the inde-

pendent union would get credit for it, and Mr. Chapman took it from there on out. He goes on to say:

"Q. What do you mean by that?

"A. Him and Mr. Dawson got together and fixed up some kind of a thing for the bulletin board to show about the two per cent".

What is your recollection of that transaction?

A. The two per cent bonus which the Company gave to all employes at that time was not only for union members, it was for all employes. The Company, following its normal procedure, would put up a bulletin promptly, announcing the two per cent bonus, and Mr. Chapman, as I recall, brought me a notice that he had prepared and which he was about to distribute to union members, and asked me if that was what was going to happen, and
1828 I said that was in accordance with similar information that the Company was publishing.

Q. Mr. Dawson, Mr. Aughenbaugh also testified at pages 162 to 164 or 165, that we had asked the Company to help us out in building our membership up in the independent union; and that Mr. Bassett left the meeting after this two per cent bonus was announced, and they seemed to think if we got credit for the two per cent bonus that was given out it would bring our membership up, showing the union was trying to do something for members of the union, and if the union got credit for it it would build our membership up.

What is your recollection of any such conversation?

A. I do not recall any statements on behalf of the Company that the announcement of a two per cent bonus should increase interest in the independent union.

Q. Did the representatives of the independent union on different occasions complain about their difficulty in collecting dues and keeping membership up and ask the Company to help them?

A. Well, they complained many times that they were not going to satisfy their membership unless they got results.

Q. Do you recall any statement ever being made by Mr. Bassett, or anyone else, on behalf of the Company, that anything that the Company had done or proposed to do was for the purpose of helping the union keep its membership up or collect dues?

1829 A. No. On the contrary they were told many times they were not interested in helping them maintain a union.

Mr. McRoberts: That is all.

Re-Cross Examination.

Q. (By Mr. Evans) On what occasions did that last statement occur?

A. The occasions when they would ask for a bulletin board, saying that it would help their membership; on occasions when they said in answer to facts presented to them showing that certain operations were not justified "we need those raises to build interest in our organization", in that department, and in similar instances.

Q. In what form was the notice that Chapman brought to you of the two per cent bonus?

A. It was a typewritten form.

Q. It was not mimeographed?

A. No.

Mr. Evans: That is all.

Mr. McRoberts: That is all.

(Witness excused)

* * * * * * *

1834 OTIS D. SULLIVAN,

a witness called by and on behalf of the Intervenor, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Ely) What is your name?

A. Otis D. Sullivan.

Q. Where do you live, Mr. Sullivan?

A. I live at East Alton, 124 East Herman Street.

Q. Are you in business?

A. Yes, I manage the Bluff City Coal Company in Alton.

Q. At Alton, Illinois?

A. Yes.

Q. Are you now connected with the Western Cartridge Company in any capacity?

A. No.

Q. Were you formerly connected with that company, employed by it?

A. Yes, I worked for the Western. I left there in
1835 1937. I don't know just the date.

Q. About what time of year?

A. Well, it was when this Union was first started.

Q. And how long did you work there?

A. I worked there about three years.

Q. You say you left there when the Union was first started?

A. That is right.

Q. What Union do you have reference to?

A. Western Cartridge Independent.

Q. And did you have any connection with the organization of that Union?

A. I was secretary.

Q. You were the first secretary?

A. That is right.

Q. Were you active in the organization of it before you were made secretary?

A. No, I was appointed temporary secretary when they first met, and then they appointed me permanent. I was secretary for one year, and then after that year was up I had an opportunity to be manager of the Bluff City Coal Company in Alton, which is owned by E. K. Elfin, so I took the job.

Q. When you said you left at the time the Union was organized, you didn't leave the employ of Western Cartridge immediately upon organization of the Union?

A. No.

1836 Q. You were there for a year or more?

A. I was there for a year, but I got a temporary leave of absence from the company.

Q. And when was it that you took that leave of absence with reference to the time you were elected secretary?

A. I never took that leave of absence until I was appointed secretary.

Q. I see. Why did you do that, why did you take the leave of absence then?

A. The boys wanted me to, the representatives.

Q. What boys do you mean?

A. The representatives of the Union.

Q. So that you could devote your full time to being secretary of the Union, is that the idea?

A. That is right.

Q. And did you devote your full time to that Union?

A. I did for one year.

Q. Were you paid a salary for that?

A. Yes.

Q. Who paid you, and how much?

A. The Union paid me, the Western Cartridge Independent Union paid me $125.00 a month.

Q. Did you have an office?

A. Yes, sir.

Q. Where was that?

1837 A. It was on West Main, I don't know, I don't just recall the number.

Q. Did you as Secretary of the Independent Union keep minutes of the meetings?

A. Yes, sir.

Q. How often did they have meetings of the Union itself?

A. I think they met twice a month, I think it was.

Q. And how about the officers of the Union, how often did they meet?

A. That is the officers of the Union, they met twice a month.

Q. And how often did the body of the members meet?

A. Well, that varied. They would call an open meeting. They had several while I was secretary, I mean, not several, but I think they had possibly three.

Q. What was done with the activities of the Union during the time you were secretary of it with reference to raising funds and the manner of raising funds?

A. Well, we gave a dance out at Harmony Hall, that was the first one right after we had organized, and I think we had something like fourteen hundred people there.

Q. And you made some money that way?

A. Yes.

Q. Then did you have other entertainments and other affairs of that kind?

1838 A. Yes, we gave another dance that I can recall, and we also had a boat excursion. We made money on all three.

Q. Were they for members of the Independent Union and their families?

A. That is right.

Q. Friends?

A. Yes.

Q. Now, how did you happen to join this Union?

A. Well, that is kind of hard to say. Someone asked me what I thought of it, I forget who it was, and he said we might be able to help ourselves a little to get something. Well, he said, "I will tell you, I am going to be at the meeting tonight or this afternoon," I believe it was Charley Taylor mentioned it to me, he said, down at Francis Manning's office.

Q. Charley Taylor, sitting over there?

A. That is right. So after work we all went down, there was possibly ten or fifteen of us.

Q. Were you ever solicited by any member of the Company or by any officer or person in any official capacity with the Western Cartridge Company, to join that Union?

A. No.

Q. Do you hold a membership card or did you hold one?

A. Yes.

Q. What was your number?

1839 A. I forget what it was.

Q. Do you remember whether it was No. 4 or not?

A. No, I don't know.

Q. It was a low number, wasn't it?

A. Oh, yes, it would have to be. Charley Baker, I think he wanted No. 1, wasn't it?

Q. Charley Taylor, you mean?

A. Charley Taylor; and mine was down there some place. Several of the boys wanted a low number. I don't just recall; it didn't make any difference with me.

Q. Did you ever have any talks with any officer of the Western Cartridge Company or any officer of the Western Cartridge Company ever talk to you about joining the Union or belonging to it?

A. Never did.

Q. Or express any opinion to you as to whether you should or should not belong to it?

A. No, sir.

Q. Then after you became secretary and treasurer of it, did you have dealings with the officers of the Western Cartridge Company?

A. No, sir.

Q. I say, did you have any dealings with it. You did have dealings with it, didn't you?

A. We had dealings with it, the whole body did.

1840 Q. That is what I mean, I didn't mean you individually.

A. Yes, we met with the company.

Q. How often would you meet with them, on what occasions would you meet with them?

A. We would meet with them with demands, trying to get vacations, raise in pay, different things like that.

Q. How would you go about arranging a meeting with the officers?

A. Well, the representatives of the Union would have a meeting at their office and then they would instruct me, or maybe Mr. Wilmering—

Q. Who is Mr. Wilmering?

A. Mr. Wilmering is one of the representatives, to get in touch with some of the officials of the company, the personnel manager or the superintendent, to see how soon they could arrange a meeting with the representatives of the Union.

Q. And what would be discussed at those meetings with the officers or with the officials of the company, I mean?

A. Well, I guess, the representatives of the Union were trying to get all they could out of the company, I mean, the other employees and themselves as well.

Q. In what way?

A. They would bargain with them for vacation, they wanted two weeks, and I think they finally compromised with a week's vacation at the time.

1841 Q. Before that was taken up did they have any arrangement for vacations at all?

A. No, they never gave the employes a vacation at all.

Q. Until this Independent Union took it up with them?

A. That is right.

Q. And when these discussions would originate, would

any official of the Cartridge Company ever be present at the meeting?

A. Officials of the company?

Q. Yes, at the meetings, where your ideas or your matters would originate?

A. Mr. Bassett was general manager then and George Dawson was personnel manager, and those two were the men that met with the representatives of the Union.

Q. What I have reference to, would they meet with the officers of the Union before there was any bargaining power?

A. No, no, they would meet in the cafeteria of the Western, and that is where they held their meetings.

Q. And those meetings would be at the instance and suggestion of the Union, as a rule, or sometimes, at least?

A. That is right.

Q. Before those meetings with Mr. Dawson and the other gentlemen that you have mentioned, as I understand it, the officers of the Independent Union would have their meeting and decide what they wanted?

1842 A. That is right.

Q. Now, what I want to know is whether any official of the Western Cartridge ever attended any of those meetings of the officers of your Union?

A. Never while I was in office.

Q. Did you keep the minutes of the meetings?

A. I did.

Q. And did you faithfully record and accurately record, as well as you could, what went on?

A. To the best of my knowledge.

Q. At the meetings?

A. Yes.

Mr. Ely: I think possibly, Mr. Examiner, these things have been introduced already, or not?

Trial Examiner Ruckel: No, they haven't been introduced in evidence.

Mr. Ely: Have they been identified?

Trial Examiner Ruckel: I don't think they have been identified, have they, Mr. McRoberts?

Mr. McRoberts: The first volume was identified as Respondent's Exhibit No. 25 and questions were asked re-

garding this list of employes, list of members shown in there.

Mr. Ely: You refer to the list of members. There are two lists of members in there, or three, the names of
1843 applicants attached to the minutes of the meeting of June 16, 1937.

Mr. McRoberts: Yes, that type of list was referred to rather generally. In the other two volumes the minutes have not been identified, and none of the minutes have been introduced as such; there was testimony with respect to the subject matter covered by the minutes of the joint meeting between the representatives of the Union and representatives of the Company.

Q. (By Mr. Ely) Mr. Sullivan will you examine Respondent's Exhibit 25, and see whether or not those minutes were prepared by you, signed by you as secretary? When I said those, I mean those minutes are part of them, I don't know how far they go.

A. They went—

Q. From what date to what date do those minutes cover?

A. June 4, 1937, to July 9, 1937.

Q. Now—

Mr. Evans: Pardon me. Doesn't that include July 22nd?

A. Does it? I didn't see the last date.

Mr. Ely: I believe it does go to July 22nd, that is when it goes to.

The Witness: Is that right?

Mr. Ely: Yes; it goes to July 22, 1937.

1844 The Witness: That is right, July 22nd was the last one in here.

Mr. Ely: Mr. Niederluecke, will you mark this exhibit Independent Union's Exhibit 1.

(Said volume of minutes marked "Intervenor's Exhibit 1", for identification.)

Q. (By Mr. Ely) Mr. Sullivan, I will hand you Western Cartridge Employes' Independent Union's Exhibit 1, and ask you to examine that book and see if that contains certain minutes of the meetings of the Executive Board of that Union, which were prepared and signed by you, and from what date down to what date?

A. This was is dated July 22, 1937.

Q. That is the first date in there?
A. That is right.
Q. And then just go down to the yellow paper?
A. August 8, 1938.
Q. No, one ahead of that.
A. One ahead of that?
Q. Yes.
A. August 2, 1938.
Q. Now, then, will you glance through them and see whether you prepared and signed all of those minutes between July 22, 1937, and August 2nd, 1938?

Mr. Evans: Pardon me, counsel. While he is check-
1845 ing that, don't the minutes also include joint meetings held with representatives of the Company, and also mass meetings?

Mr. Ely: That is right, they do.

Mr. Evans: I think you limited it.

Mr. Ely: I did ask him if that was the minutes of the meeting of the Executive Board, but I am glad that you made the suggestion that it does also include joint meetings with the others, the mass meetings, and so on.

A. I was mistaken in the salary awhile ago, it was 135 instead of 125. That is right.

Mr. Ely: Mr. Examiner, may it be considered that these two exhibits, Respondent's Exhibit 25 and Western Cartridge Employees' Independent Union's Exhibit 1 are in evidence, so that they may be referred to for material parts by either party to these proceedings.

Trial Examiner Ruckel: They may be referred to by exhibit numbers, but they have not been offered. Are you offering them?

Mr. Ely: Yes, I say, I would like to offer them with the understanding, of course, that we won't have to read the whole minute, but that either party may read any part which might be pertinent or relevant, if that is satisfactory.

Mr. Evans: I think, Mr. Examiner, a large part of that material has already been covered by testimony of
1846 Respondent's witnesses, and I believe that to place all the material in evidence, puts a certain amount of material in that is not relevant.

Mr. Ely: Well, I have no desire or intention to burden the record, but there might be some things in here that you or Mr. McRoberts or I, or any of us, might think would be material, that has not been covered or has not been read into the record. I don't know whether any of it has been read into the record, as a matter of fact.

Trial Examiner Ruckel: If you think such material is there, I suggest you yourself make the selection.

Mr. Ely: All right.

Trial Examiner Ruckel: Of such parts that you think are material and relevant.

Mr. Ely: I will offer the entire minutes, as have been identified, for the purposes stated. I am making that offering first, because I think that is proper.

Trial Examiner Ruckel: Well, we had this question up the other day. You have examined these minutes, Mr. Evans, haven't you?

Mr. Evans: Yes.

Trial Examiner Ruckel: Mr. Evans hasn't offered any of it, I notice, on behalf of the Board. I suppose it is a fair assumption that there were no minutes which he thought aided his case, or they would have been pre-
1847 sented. Now I am asked on behalf of the company and the respondent to accept a huge mass of undigested minutes, for what purpose I don't know.

Mr. Ely: Well, I can very easily clear that up. The purpose of offering it is to show the operation of the Independent Union, show that it did operate as an Independent Union, and I think the better way to show that, one of the best evidences of that fact is the minutes that have been offered here. I could, of course, just start off reading, with the Examiner's permission, I mean, and read the entire minutes, but I think that would be rather a cumbersome proposition, and it is customary in all trial proceedings, just to offer any documentary evidence with the understanding that any portion of it that either party considers relevant or material, might be incorporated in the record by that party, but, as a matter of fact, under the general rule of procedure, I think it is necessary to offer the whole of any document in order to get a part of it in, so if I should offer a part, then that might be objection-

able, because there might be some parts that the one party or the other would think didn't apply.

Trial Examiner Ruckel: The exhibit has been marked. What is the objection, since all parties have and have had access to these minutes, to leaving them in that position, and then any party who wants or attaches any par-
1848 ticular importance to any particular set of minutes, offer that portion in evidence.

Mr. Ely: I have no objection to that. That is what I am trying to do, I am offering the whole thing in evidence with the understanding that only such parts of it as any party considers material or relevant, be later incorporated in the record after obtaining the Examiner's approval.

Trial Examiner: I think that is permissible. We don't want in future time, though, to have to print it when there is nothing in most of them that anybody attaches any importance to.

Mr. Ely: I think the Examiner and I are of one thought in the matter. I just didn't express it as well as I might have.

Trial Examiner Ruckel: Well, the exhibits may be admitted with the understanding that they will not become a part of the record, except such portions as are specifically called to the Examiner's attention by any of the parties.

Mr. Ely: That is right.

Trial Examiner Ruckel: And those may be considered for the purpose as described by the party in question.

Mr. Ely: By the party offering it.

Mr. McRoberts: Mr. Examiner, may I ask whether you are referring to the portions which may be called to the attention of the Examiner on brief or oral argu-
1849 ment, or called to the attention of the Examiner in the course of the admission of testimony?

Trial Examiner Ruckel: Either one.

Mr. Ely: Either here or in argument?

Trial Examiner Ruckel: That is right.

Mr. Ely: That is my understanding. That applies to Respondent's Exhibit 25 and Western Cartridge Employes' Independent Union's Exhibit 1, is that right?

Trial Examiner Ruckel: Yes, that might apply to Exhibit 25. 25 was not summarized the other day.

Mr. McRoberts: No.

Mr. Ely: You may inquire.

Mr. McRoberts: May I ask just a question or two, if possible, before the Board begins?

Trial Examiner Ruckel: As on direct?

Mr. McRoberts: On direct examination.

Trial Examiner Rucker: As on direct.

Further Direct Examination.

Q. (By Mr. McRoberts) Mr. Sullivan, where did the Independent Union hold its meetings other than meetings for collective bargaining, with representatives of the company?

A. They held their meetings in Wood River, at Francis Manning's office.

Q. And after that?

A. Well, then they established an office of their own.

1850 Q. Did they ever hold any of the meetings of the Union, other than meetings with the company for collective bargaining, on company property?

A. Never while I was secretary.

Q. That is what I mean, of course. Where did the Union get the money with which to operate its affairs and conduct its business, pay its salaries, such as your salary?

A. Well, through a membership fee, I think that was twenty-five cents a month per person. They paid their bills, and then we had, as I said, two dances and a boat excursion, and that helped take care of our bills, too.

Q. Did they ever get any money from the company for that purpose or for any purpose?

A. Never did.

Q. Who was the Union's attorney, who organized the Union?

A. Francis Manning.

Q. Who employed Francis Manning?

A. I couldn't truthfully say. Of course, I would have to be truthful, but I mean I couldn't say who did hire him. I know that he and Charley Taylor were pretty good friends, and just as soon as his name was mentioned, he

was also a good friend of Wilmering, who took a rather active part in the Union, and he is also a very good friend of mine, and it seemed like he was a friend of all the fellows, so there was no objection.

1851 Q. Did the company have anything to do with hiring Manning?

A. Not that I know of.

Q. What was your position with the company?

A. I worked in No. 2 roll room. I figured invoices, and when the safety shoes came in, they turned that over to me, too.

Q. Is that clerical work?

A. Yes.

Q. Were you acting in a supervisory capacity in any way?

A. No.

Q. Were any of this original group who met at Manning's office and formed this Union, foremen or supervisors?

A. No, there weren't.

Q. And during your connection with the Union were any foremen or supervisors ever admitted to membership?

A. No, sir.

Mr. McRoberts: Mark this our next exhibit.

(Said paper was marked "Respondent's Exhibit 26", for identification.)

Q. (By Mr. McRoberts) Mr. Sullivan, I will show you a paper which has been identified as Respondent's Exhibit 26, and ask you if you ever saw the original of that letter.

Mr. Evans: Is the original available, counsel?

Mr. McRoberts: I don't know what has happened to that. I may be able to dig it up. This is the one that

1852 came to our office, it is from our files.

The Witness: Yes, I remember it.

Q. (By Mr. McRoberts) And what did you do, what connection did you have with the original of that letter?

A. The representatives instructed me to deliver that letter to Mr. F. W. Olin.

Q. Did you sign the original of the letter?

A. Yes, sir.

Q. And Mr. Tuett?

A. And Mr. Tuett.

Q. What did you do about delivering it?

A. Well, the following day I took it down to the office, Western Cartridge Company office, and Mr. F. W. Olin was out of town, so the secretary told me to see Mr. J. M. Olin, that he took care of things while the old gentleman was gone.

Q. Did you deliver the original of this letter to Mr. J. M. Olin?

A. I did.

Q. After you ceased to be secretary of the Union sometime in August of 1938, you did not go back to take employment with the company?

A. No, I didn't do anything for about a month, and then this friend of mine wanted me to come over to Alton and take this coal company over that had just about
1853 gone out of existence, so I went over with him.

Mr. McRoberts: I think that is all.

Trial Examiner Ruckel: Cross examine.

Q. (By Mr. McRoberts) Oh, yes: Mr. Sullivan, there is a reference in the minutes to the giving of a pass or giving you permission to go into the company property and on the company property to see Union officials on Union business. Did you ever get a pass following that permission?

A. After I left the company's employ, when I became secretary, I never entered the plant again up to the present time.

Q. You were never given either a blanket pass or individual passes?

A. I was never given any pass.

Mr. McRoberts: That is all.

Mr. Ely: That is all.

Cross Examination.

Q. (By Mr. Evans) I refer you to the minutes of June 4th, in Respondent's Exhibit 25. The persons there named as being present in Manning's office were all employed by the company at that time?

A. They were.

Q. What was Alvin Cannedy's job?

A. He was a machinist in the metallic.

Q. How long had he worked for the company?

A. I can't say.

1854 Q. Is he an old employe of the company?

A. I don't know about that; but he has lived in East Alton all of his life, I imagine, so I couldn't say how long he had worked there.

Q. Earl Hooper has already testified. Mitchell Jackson, what was his job?

A. He worked in the brass mill.

Q. Was he an old employe?

A. No, I don't think so, because he wasn't a very old man.

Q. And G. Ladd?

A. He was a machinist.

Q. Was he an old employe of the company?

A. I imagine Goebbel had been there five or six years; say, five.

Q. And K. Ladd?

A. Kenneth Ladd, he was an adjuster in the Empty Shell.

Q. Was he an old employe?

A. Well, I imagine Kenneth had been there—well, the only thing I could say, he was there when I went to work for the company, so—

Q. Three years?

A. Three years is right.

Q. And R. H. McManus?

A. He worked in the tool room, in the Metallic, giving out tools, seeing that they were brought back.

1855 Q. Is he an old employe?

A. He is present. I couldn't say. I mean, he is here today.

Q. G. E. Schauerte, what was his job?

A. He worked in the Plant Department. He was a welder or something, pipefitter.

Q. Had he been with the company for a long time?

A. I don't think he had been with it so awfully long. He had been with them, I know, as long as I had at that time.

Q. And Howard Tueth?

A. He worked in the brass mill.

Q. What was his job then?

A. Well, I think he told me one time at that time, when an order would come in he would keep that order up from

one roll to the other, I don't know, chasing orders or something like that.

Q. Follow-up man?

A. Well, when a big order would come out of the cast shop it seemed like—I asked him one time what his capacity was in the brass mill, and he said that he would see that this order got to the No. 1 roll, then after No. 1 roll those orders come through all the time, to keep them straight.

Q. Is he an old employe?

A. He worked there at that time as long as I had.

Q. He was elected temporary chairman?

1856 A. That is right.

Q. At that meeting?

A. Yes.

Q. Ira Wilkerson?

A. He worked in the brass mill also. He worked in the finished brass.

Q. How long did he work there?

A. He was working there when I first started.

Q. Wilmering?

A. Well, Wilmering, he worked over in the Smokeless Powder. He was there as long as I had been there, but what capacity he did I don't know; not much of anything, I guess.

Q. At that first meeting, was it agreed that cards be printed and applications obtained?

A. Yes, I am pretty sure it was at the first meeting when they made me temporary secretary and Mr. Tueth temporary chairman.

Q. The minutes so show?

A. I am pretty sure we did. I don't just remember offhand whether we did or not. I haven't seen the minutes since that date.

Q. The minutes are before you if you need to refresh your recollection.

A. Yes, I would like to. (Examines minutes.)

1857 Q. (By Trial Examiner Ruckel) Do you recall the question?

A. No, I don't.

Mr. Evans: Will you read it to him?

(Last question read.)

A. Yes.

Q. (By Mr. Evans) I show you Board's Exhibit 4, and ask you whether or not that is substantially the card that was printed following that meeting except for the reference to the date in the upper righthand corner?

A. Yes, that looks like one of them.

Q. Now, refer to your minutes of June 16th, minutes of your Executive Board meeting. That was before you had an Executive Board, that was a meeting of the Temporary Committee?

A. Yes.

Q. There are attached thereto certain lists of applicants?

A. Yes.

Q. I wonder if you could count those rather rapidly by page and tell us how many applicants had been obtained up to that time.

A. (After counting.) Approximately 2,240.

Q. That list was prepared from the application cards, Board's Exhibit 4?

A. That is right.

Q. Similar to Board's Exhibit 4?

A. Yes.

1858 Q. (By Trial Examiner Ruckel) Mr. witness, there are one or two pages such as the one I show you.

A. I missed that one with just a few on it.

Q. Which have only four or five names.

A. I didn't count them.

Q. You didn't include them in your calculation?

A. No. There is one down here at the bottom needed a few, so I just figured those on those.

Q. (By Mr. Evans) I show you Board's Exhibit 6, the printed constitution that has been admitted in evidence. Was that constitution printed before the meeting of June 4, 1937?

A. That was the temporary committee?

Q. Yes, the first minute referred to in Respondent's Exhibit 25.

A. Not that I know of.

Q. You didn't have anything to do with the printing of that document?

A. No, I never.

Q. And the amendment, Board's Exhibit 7, of June 16,

1937, did you have anything to do with the printing of that document?

A. No, I didn't have anything to do with the printing of that either.

Q. Does that refer to the fact that the amendment
1859 was adopted at a meeting on June 16th? The date on the amendment, does that refer to the fact it was adopted on June 16th?

A. Yes.

Q. I am showing you minutes, Respondent's Exhibit 25, and ask you to state wherein the minutes refer to amendment, Board's Exhibit 7?

A. You mean what meeting—what was the question?

Trial Examiner Ruckel: Read the question.

(Last question read.)

A. Well, it says here, "The question of amending the proposed constitution of the Western Cartridge Independent Union was then discussed, and it was decided some amendment be made to the proposed constitution before said would be voted upon by the entire membership."

Q. (By Mr. Evans) You are now reading from what minute?

A. June 10th.

Q. It doesn't specify what amendments were discussed?

A. It doesn't.

Q. Do you know whether the amendment of June 16th was discussed or not?

A. No, I don't remember.

Q. You say you had nothing to do with the printing either of the original or of the amendment?

A. No.

Q. You were the temporary secretary and the tem-
1860 porary treasurer at that time?

A. That is right.

Mr. Evans: Counsel, may I have your Intervenor's Exhibit one minute?

Mr. Ely: Surely. If I had known, Mr. Evans, that Mr. Sullivan's minutes go merely to the first yellow paper there, then there are two other secretaries following him, and there are still other secretaries in this one here which have not yet been identified—I just wonder if we might

save time by—I don't know if I want to call each of those men, I don't know who all of them are or whether all of them are available, it might save time just to consider that the entire book go in under the same understanding we had before, if you want to waive identification.

Mr. Evans: I will stipulate that if the respective secretaries were called, that they would testify that these are their minutes.

Mr. Ely: All right.

Trial Examiner Ruckel: We will recess for ten minutes now, gentlemen.

(Ten minute recess.)

Q. (By Mr. Evans) Referring, Mr. Sullivan, to the meeting of August 12, 1937, it appears from the minutes that a basic agreement was signed, and then the officials of the company retired, and various matters were discussed
1861 by the Executive Board and the Department Advisory Committeemen. That meeting was held in the office of the company, or in the cafeteria?

A. In the cafeteria.

Q. Was that a meeting of the Union Executive Board and Advisory Committee which was there held in the cafeteria?

A. That is right.

Q. That was after you had signed the basic agreement?

A. Yes, sir.

Q. And you discussed then and there affairs of the Union?

A. Yes, sir.

Q. Do you recall any other such meetings held by the Executive Board with or without the Advisory Committee in the Company offices or cafeteria, following a joint meeting?

A. No, I don't recall any.

Q. Referring to the minutes of July 22, 1937—

Trial Examiner Ruckel: That is Respondent's Exhibit 25.

Mr. Evans: No, I believe it should be explained that the last minutes in Respondent's Exhibit 25 are minutes of a committee meeting of July 22nd, and the first minutes in Intervenor's Exhibit No. 1, are the minutes of the Executive Board held on the same date.

Q. (By Mr. Evans) Referring to the Executive Board minutes of July 22, 1937, being the first in Inter-
1862 venor's Exhibit 1, there is a reference to a conference to be arranged with the Company for purposes of arriving at a working agreement and setting forth certain provisions, is that correct?

A. That is right.

Q. Now, I wish you would look at the minutes and see if there is any other reference in the minutes to any previous request or action by the Union in that regard?

Mr. Ely: You mean prior to July 22nd?

Mr. Evans: Yes.

Mr. Ely: I think, Mr. Sullivan, that would be in this book.

Mr. Evans: You see, inasmuch as the minutes are only in there for such parts as are brought out, then it is necessary to refer to specific points. Board's counsel usually don't file a brief, and Board's counsel has no opportunity to argue before the Board.

A. Mr. Evans, this meeting of the 22nd is when the representatives were made permanent officers.

Q. (By Mr. Evans) Yes. Well, my question is, the reference in those minutes to a proposed meeting with the company, the question is whether or not that is the first reference in your minutes to any such conference with the Company?

A. Of July 22nd?

1863 Q. Yes. In other words, your first minute begin with June 4th. Is there any reference between June 4th and July 22nd with respect to meeting with the company, bargaining?

A. No, I don't think there were.

Q. In other words, that is the first action taken by the Union in that regard?

A. That is right.

Q. I now hand you Respondent's Exhibit 26 for identification.

Mr. Ely: Pardon me just a moment, Mr. Evans. In the meeting of June 4th, this appears that might have some bearing on your question. June 4, 1937, in the first paragraph where it recites that these gentlemen got together

for the purpose of organizing a Union, it also says for the purpose of dealing with the Western Cartridge Company on wages, hours and other conditions of employment.

Mr. Evans: That was before the application cards were signed.

Mr. Ely: Yes. You just asked if there was any reference to a meeting with the company before July 22nd. There was in that first minute, that reference.

Q. (By Mr. Evans) I hand you Respondent's Exhibit 26 for identification. Was that letter prepared by you?

A. It was prepared by our attorney.

Q. And was that action taken by you and Tueth
1864 without the knowledge and consent of the others?

A. No. We were instructed.

Q. At a meeting?

A. Yes.

Q. That matter does not appear in your minutes.

A. It doesn't. I never done anything that I wasn't instructed by the representatives of the Union.

Q. I hand you Board's Exhibit 8 for identification, and ask you to state whether or not you ever saw the original of that?

A. I don't remember; I don't remember seeing it.

Q. Do you remember of signing any order following your meeting of July 22nd?

A. Well, it has been so darned long, we had so darned much stuff to do that I don't just recall; no doubt about it, we did.

Q. Well, what happened after July 22nd with respect to recognition and collective bargaining, what was the first thing that happened?

A. Well, after the meeting of the 22nd, I think the first step they made, they met with the company and presented their demands.

Q. Was anything in writing submitted to the company representatives before a meeting other than the letter which you said you submitted to the company on or
1865 about June 25, 1937?

A. You say presented to the representatives of the Union?

Q. Of the Company?

A. No, I don't think so. When they met, that was the

only time they would present anything to the company other than the letter that I took to them.

Q. I show you Board's Exhibit 9 and ask you to state whether or not you ever saw the original of that document?

A. Yes, I remember this.

Q. Was that signed by you originally and by the other representatives?

A. Signed by all the representatives and myself.

Q. Now, was the first meeting with the company before or after Board's Exhibit 9 was submitted?

A. I don't remember. I know we wrote the company several times, but I don't remember the date.

Q. Did you have any conversation with any representative of the company other than at joint meetings?

A. No.

Q. With respect to recognition and collective bargaining?

A. That was always left up to the representatives. I think one time I took it upon myself to try to get a little help from them, because our attorney was putting pressure to bear a little on us.

Q. (By Mr. Ely) That was Francis Manning?

1866 A. We owed Francis some money and he dropped the friendship and wanted the cash.

Q. Francis Manning you are talking about?

A. Yes.

Q. (By Mr. McRoberts) Who was it you were trying to get the help from, Mr. Sullivan?

A. John Olin.

Q. Did you get it?

A. No, sir.

Q. (By Mr. Evans) When did that occur?

A. It happened just before we paid Francis the last, I forget what the date was.

Q. The minutes show that was sometime in the spring of 1938, I think you will find.

Mr. Ely: I think it might be agreed that that was in the spring of 1938.

Mr. Evans: I will so stipulate. I have seen it in there.

Trial Examiner Ruckel: What is the stipulation?

Mr. Evans: That the discussion with Francis Manning as

to his fee occurred sometime in the minutes of the meeting, in the minutes of a meeting in the spring of 1938.

Mr. Ely: That is right. The date may be supplied if we want it.

Q. (By Mr. Evans) Now, the minutes of July 29, 1867 1937, refer to a conference held with the company. Will you tell us as nearly as you can recall what was said, what took place at that conference, conference with the company?

A. I don't believe this was arranged for their attorney, I mean, the Western Cartridge Independent Union attorney, to meet with the company.

Q. (By Trial Examiner Ruckel) You don't believe that it was, you say?

A. Just a minute, please; I don't remember this.

Q. (By Mr. Evans) Well, do you recall whether or not a meeting had been held with the representatives of the company before that time?

A. Before July 29th?

Q. Yes, before July 29th.

A. No, I don't remember.

Q. Referring to the minutes of August 2nd, 1937, wherein it is stated that attorney, Francis J. Manning, then made a report on a conference held with attorney for Western Cartridge Company, will you tell us what you recall that Mr. Manning reported at that time?

A. I remember them having Francis Manning go to St. Louis to see the company's attorney, but I don't remember what was said at that time.

Q. The minutes record that after some discussion it was moved by Virgil Keefe, seconded by Clyde Mitchell, 1868 that a new contract be drawn on the working agreement between the Western Cartridge Company and the employes, but that the investment features be retained. Had there been an agreement drawn up by the Executive Board or by the attorney or both, and submitted to the company, do you know?

A. In regard to that?

Q. Prior to this discussion and this motion which the minutes stated was carried?

A. This here, I just recall just a little of it. This new contract, you see, there was already a contract that existed

between the employes and the company before the Union was organized.

Q. That is referred to as the individual contract?

A. That is right. That is what they were referring to there.

Q. The discussion was, then, to submit a new contract of some kind? A. Yes.

Q. In lieu of an individual contract?

A. Yes, I am pretty sure that is what the argument was about.

Q. And that motion carried?

A. It carried with the representatives.

Q. And there was a subsequent motion at that meeting to make the contract general, leaving specific items to be taken up at a later date, is that true?

1869 A. That is what it says here.

Q. Do you know what the discussion was on that motion, which, by the way, the minutes show, was carried, is that right?

A. Yes.

Q. Do you recall what the discussion was on that point?

A. No, I don't, I don't remember.

Q. Then referring to the minutes of August 6, 1937, wherein it is stated that attorney Francis J. Manning then made a report on conference held with attorney for the Western Cartridge Company. Do you recall what it was that Mr. Manning reported at that time?

A. No, I don't remember.

Q. Then the minutes show that a motion was made by Virgil Keefe, seconded by Conrad Barkley, to recall this motion passed August 2nd, 1937, concerning general contract, and to vote in favor of accepting individual contract with amendments to said contract, which was likely to meet with the approval of the Executive Board, and that motion carried, is that true?

A. Yes, sir.

Q. What was the discussion on that motion?

A. I don't remember. I remember of them having those discussions on the first contract, trying to get it throwed out.

1870 Trial Examiner Ruckel: Well, the implication is by that language that the contract referred to in the minute of August 2nd was not an individual contract.

Mr. Ely: Was not what?

Trial Examiner Ruckel: Was not an individual contract, but a general contract.

Mr. Evans: It refers to a working agreement.

Q. (By Trial Examiner Ruckel) That doesn't refresh your recollection?

A. No. That new contract was drawn by a working agreement between the Western Cartridge and the employes, but the investment feature was retained.

Q. (By Mr. Evans) Pardon me?

A. The only investment feature would be in the individual contracts, so that must be what they were discussing there.

Q. Then the next reference to a contract is contained in the August 10th meeting, is that true?

A. August 10th?

Q. Is that true?

A. Yes.

Q. And at that time the minutes show that the basic agreement submitted by Western Cartridge Company to the representatives at a conference held at the office of the Company August 10th, at four P. M., was then discussed?

A. Yes.

1871 Q. Do you recall what discussion took place in that regard?

A. Francis Manning was there, the Western Cartridge Independent Union's attorney.

Q. Was he present at the meetings with the company?

A. He was present at this meeting.

Q. He was not present at the meeting at the office of the company?

A. He was present at one or two of the meetings, I mean, I don't remember just how many, but he was present at this meeting, but I don't remember how many meetings he was present.

Q. Do you recall any discussion that took place at that time in your meeting?

A. No, I don't remember what was said.

Q. Do you remember what took place in the meeting with the company?

A. The representatives—I don't even remember what

their basic agreement was, but it was agreeable with the company and the representatives of the Union.

Q. Now, the next reference is to a meeting on August 12th, is that correct, 1937, is that correct?

A. Yes, that is right.

Q. There appears to be a motion at that meeting by Barkley and seconded by Wilmering, that the basic agreement as submitted on August 12, 1937, be approved, and that the Executive Board execute it. Was that mo-
1872 tion made and carried in the presence of the company representatives?

A. I don't remember. I imagine it was. I don't recall that.

Q. The meeting was held at the office of the company?

A. Yes.

Q. Now, was that a different basic agreement than the one submitted to the Union and discussed in the Union meeting of August 10, 1937?

A. I am pretty sure it was the same basic agreement.

Q. Do you recall what discussion there was on the agreement at the August 12, 1937, meeting?

A. No, I don't recall what was in the basic agreement.

Q. Now, it states that the Department Advisory Committeemen were also present. Is it true that there were approximately forty-five such committeemen present at that meeting?

A. Something like that.

Q. Who was it that was instrumental in having the Advisory Committeemen present at that meeting?

A. I imagine the representatives of the Independent Union.

Q. Do you recall any such action?

A. No, I don't.

Q. Do you know how the meeting of August 12, 1937, was called.

A. No, I don't recall, I don't remember.

Q. Did you submit any evidence to the company of
1873 the Union's membership?

A. I think at the time I took that letter in, supposedly to Mr. F. W. Olin, and I presented it to J. M. Olin, the vice-president.

Q. (By Trial Examiner Ruckel) Which letter, now, do you refer to?

A. This letter here.

Q. Respondent's Exhibit 26?

A. I am pretty sure he asked me how many members we had at that time. I told him I don't remember what it is now, but I could refresh my memory then, and that was all that was said then between he and I.

Q. (By Mr. Evans) Well, did you submit any evidence other than your statement to Mr. Olin, on your membership? Well, a preliminary question: You had the custody of the application cards?

A. That is right.

Q. And the minutes of the meetings, things of that nature?

A. Yes.

Q. Do you recall whether or not you submitted any evidence of your membership to Mr. Olin?

Mr. McRoberts: You say to Mr. Olin?

Mr. Evans: Yes, or any other official or representative of the company.

A. I thnk one time George Dawson asked me that
1874 question and I told him. I am pretty sure it was.

Q. (By Mr. Evans) You told him the number?

A. That is right.

Q. Do you remember whether that was before or after the August 12, 1937, meeting?

A. I think that was after August 12th.

Q. (By Trial Examiner Ruckel) When you started to continue with your answer you said "but".

Mr. Evans: I am sorry.

Q. (By Trial Examiner Ruckel) I didn't think you had completed your answer. Read the answer.

(Last answer read.)

Mr. Ely: I think he said "was". You misunderstood the word for "but".

Q. (By Mr. Evans) You say you think that Mr. Dawson asked you that after August 12, 1937?

A. Yes.

Q. Could you fix the date any more definitely?

A. No, I couldn't.

Q. Was it in 1937 or '38?

A. It was 1937.

Q. And you told him at that time you thought the Union had a majority or did you state the number?

A. The number, yes.

Q. As far as you know, you didn't submit any other
1875 evidence of the membership?

A. No.

Q. Referring to the minutes of November 13, 1937—

A. This goes from October 28th to November 9th.

Q. Is there one on November 13th?

A. Yes, here it is.

Q. At that meeting was there a motion by Virgil Keefe, seconded by Berkley Wilmering, that the representatives call a meeting with the officials of Western Cartridge Company and that that motion was voted down four to two; was such action taken?

A. Undoubtedly did. It is in the minutes.

Q. Do you recall what discussion led up to that motion?

A. No, I don't remember.

Q. Is it true that the next joint meeting referred to in the minutes of the Union occurred on the 8th of March, 1938?

A. What was the question?

Mr. Evans: Will you read the question?

(Question read.)

A. That is right.

Q. (By Mr. Evans) You have checked the minutes between November 13th and March 8th to ascertain that fact?

A. That was March—

Mr. Ely: 8th.

A. 8th? That is right.

1876 Q. (By Mr. Evans) And there were no such recorded minutes, is that true?

A. That is true.

Q. Now, are there any unrecorded minutes that you know about?

A. Not that I remember.

Q. If there had been any meetings, would they have been so recorded?

A. That is right.

Mr. Evans: That is all.

Mr. Ely: That is all.

Re-Direct Examination.

Q. (By Mr. McRoberts) Mr. Sullivan, you refer to Mr. Kenneth Ladd and his job by the term of Adjuster, what kind of adjuster do you mean?

A. Well, I am not very familiar with those machines, but they have a lot of adjusters.

Q. Is it adjusters of machines?

A. That is right.

Q. It is not a claim adjuster?

A. No, no. When a machine breaks down they have to have men replace the parts. They are, you might say, machinists, in other words.

Q. Mr. Sullivan, there are references in the minutes to requests on the part of the Union for list of the company's employes. Did the Company ever furnish you with
1877 or the Union with such list during your term of office?

A. I don't believe they did.

Q. You are familiar with the operation of the company's mailing system, are you not, Mr. Sullivan?

A. Yes.

Q. While you were secretary and treasurer, did you ever use the company's mailing system for the purpose of collecting dues?

A. No, I never did.

Q. How did you operate to collect dues?

A. Well I had some cards printed by Kehoe Printing Company.

Q. Postcards?

A. I would get penny postcards and have them printed down there and mail them to the ones that were delinquent.

Q. Sent them through the United States mail?

A. That is right.

Q. Then was the use of postcards changed after that?

A. Not while I was in office, I mean, while I was in office. I don't know what they did after that.

Q. Now, you spoke of asking help from John Olin with respect to Manning's fee. Just what was it you asked and what answer did you get?

A. Well, Francis got on me, it seemed like he thought I was responsible for the money, I guess.

Q. (By Trial Examiner Ruckel) Referring to Mr. Manning?

1878 A. The attorney; and he said that the Union was paying other bills, printing and different things, and he really needed his money. So I took it on myself one time to go down, because I didn't want to lose his friendship, and I took it upon myself to go down and see if Mr. Olin would loan me a little money to take care of this fellow, get him off my neck, and he said, "No, he wasn't loaning any money to the Union," so that was all that was said.

Q. Mr. Sullivan, Mr. Evans asked you about the minutes of this meeting of August 12, 1937, on which the basic agreement was signed. There is reference in those minutes to something taking place after the company officials had gone and left the room. Referring to the last paragraph of the minutes, after the agreement had been signed, when it says the company officials retired and various matters were discussed by the Executive Board and the Department Advisory Committee—

Mr. Evans: Wait a minute, counsel, the reference to that same discussion, moved and seconded and what not, that the thing be approved, that material comes before.

Mr. McRoberts: I say, after the rest of the minutes, after the complete minutes there is reference to the fact that all the rest of the business of that meeting, whatever it was, had been transacted, there is reference to the fact that the

1879 officials of the company then retired and various matters were discussed by the Executive Committee and Departmental Advisory Committeemen. Do you recall how long that last matter took after the company officials retired?

A. No, I don't remember.

Q. (By Mr. McRoberts) Mr. Sullivan, did you furnish to Mr. Dawson, so that he could check against the payroll

records of the company, application cards for membership in your Union, at a time back in 1937?

A. Did we furnish him?

Q. Did you let him see your cards so he could check them against the payroll and determine whether you did really represent a majority of the members?

A. I really don't remember whether I did or not.

Q. Do you remember a discussion whether you did represent a majority of the membership?

A. Yes, that is right.

Q. You don't recall whether or not you exhibited your application cards to him or not?

A. No, I don't remember.

Q. You don't recall the exact date when this discussion took place?

A. No.

Q. You said in answer to Mr. Evans that it might have been after, probably was, or you thought it was after August 12th, signing the basic agreement; possibly it was before that date?

1880 A. It could have been.

Q. You haven't any definite recollection?

A. I haven't any.

Mr. McRoberts: I think that is all.

Mr. Ely: I have no questions.

Re-Cross Examination.

Q. (By Mr. Evans) If you had submitted cards or other material of the Union to the Company, would you have gotten a receipt for the same?

A. Oh, yes, I imagine so.

Q. Do you recall getting any receipt for documents submitted to the company?

A. No, I don't.

Q. (By Mr. Ely) If he had looked at them in your office you wouldn't have gotten a receipt for them, would you?

A. No.

Q. Or if he had looked at them in your presence, while you were both there and you were going to take the cards away when he got through looking, you wouldn't get a receipt for them then, would you?

A. No.

Mr. Ely: I don't know whether that happened or not. It is possible Mr. Dawson could look at the cards without getting a receipt.

1881 Q. (By Mr. Evans) You didn't sit through any long period with Mr. Dawson to check some two thousand or more cards, did you?

A. No.

Q. Do you recall the amount the Union had in the treasury at the time this matter came up that you were asking Mr. Olin for a loan?

A. No, I don't recall how much money we did have in the treasury. I know our expenses, we had a lot of expenses, and we just thought maybe we would pay him the money as we would go along, as we could afford it, and he wanted to finish up and get the balance of the money, as anybody else that needed it, and we didn't have the money at the time.

Q. You had many financial statements?

A. Yes.

Mr. Evans: Mr. Ely, does Mr. Chapman, by chance, have those statements with him at this time?

Mr. Ely: Chapman said they were over at the office.

Mr. Evans: That is all.

Trial Examiner Ruckel: Just one or two questions.

Q. (By Trial Examiner Ruckel) The constitution, Article 16, entitled "Finances," seems to provide for financing only by special assessments which are in no case to be higher than twenty-five cents on each one hundred dollars earned. I don't see any provisions for dues payable

1882 at certain stated periods. How did you raise your finances, through assessments in the sum of twenty-five cents?

A. Twenty-five cents a month. It cost twenty-five cents to join and twenty-five cents a month. I think that is in there.

Q. I may have overruled it. Will you see if you can find it.

Mr. Ely: There is a reference to dues in here.

Trial Examiner Ruckel: Let me ask the witness:

Q. (By Trial Examiner Ruckel) Was there a motion of

any kind or action taken by the Union to establish dues of twenty-five cents a month?

A. Yes.

Q. Do you recall when that was taken?

A. No, I don't. It must be in the minutes somewhere, because first they talked about fifty cents, then—

Q. Well, it is in the Constitution there that it shant be more than twenty-five cents for each hundred dollar income.

A. Yes.

Q. When was that made certain, that twenty-five cents, do you recall?

A. I don't recall.

Q. But you think it was at some future time definitely set at twenty-five cents every month?

1883 A. Yes.

Q. Irrespective of their income?

A. That is right.

Trial Examiner Ruckel: I have no further questions.

CHARLES P. TAYLOR,

a witness called by and on behalf of the Intervenor, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Ely) What is your name?

A. Charles P. Taylor.

Q. Where do you live, Mr. Taylor?

A. 3530 Western Avenue, Alton, Illinois.

Q. Are you employed by the Western Cartridge Company?

A. Yes, sir.

Q. In what capacity?

A. Machinist.

Q. And where, what part of the plant?

A. I am in the Metallic Shop now.

Q. How long have you been employed by the Western Cartridge Company?

A. Since 1929.

Q. 1929?

A. Yes, sir.

Q. And in the same capacity all the time?

1884 A. Yes, sir—beg pardon; during the depression I worked a few days in the shipping department; just how long I couldn't say.

Q. Except for temporary employment during the depression, the rest of the time you have been in the same department?

A. Yes, sir.

Q. Are you a member of the Western Cartridge Employes' Independent Union?

A. I am.

Q. Hold a membership card?

A. I do.

Q. What number is it?

A. No. 1.

Q. What, if anything, did you have to do with the organization of that Union?

A. Well—

Q. And when?

A. Along in the early part of 1937, I believe, a number of the fellows around there seemed to think we ought to have a Union, and they didn't hardly have the nerve to go up to the office, was the biggest thing, and see just what slant the company was going to take on it, so one day they said they would stand behind me if I would go up and lay the cards on the table with them, see just what was said, so I tried to see Mr. F. W. Olin, and he wasn't in,

1885 and I knew Mr. Bassett in the office, and he told me he could handle anything like that, so I asked him if we organized one, would anyone be dismissed; he said no, and I asked him also if we had a Union would it handicap our little contract that we had with the company.

Q. That is the individual contract?

A. Individual contract.

Q. Which has been already introduced here. Go ahead.

A. He said no, he couldn't see where it could in any way interfere with them as long as we conducted ourselves without handicapping the company, kept ourselves within our rights, that they would not interfere with us.

Q. Then did you make any inquiries or do any work in connection with—

A. Well, I was working four to twelve, I believe. I

talked with Mitchell from the detonator, and I believe Ferguson from the plant department at that time, and they said we ought to not waste a lot of time, get it going ahead, so the next day I went to Wood River to Mr. Ghio, the printer, asked him if he could fix us up any little cards for application or anything like that, and he said, well, we ought to have definitely the card what we wanted, so I went over to see Mr. Council, who had a hand with the Standard Oil Company in their organization—

Q. Who does what over there?

1886 A. I believe he is first aid man over there, but he is affiliated with their Union. He stated that he had several little books of the by-laws of different organizations, and the two that I was most interested in, I believe, I had Gerald Schauerte then read them with me, and we looked through them, and the original by-laws, I believe, were taken from Sugar Creek Refinery and Wood River Refinery, and we considered those the temporary by-laws to show the people that were in talking with us, what we had or what we intended to go by, and we also—

Q. You said you considered those temporary by-laws. You mean you had them printed?

A. We had them printed.

Q. Who had them printed?

A. I did.

Q. By whom?

A. By Mr. Ghio, at Wood River.

Q. What was the arrangement with reference to paying for the printing of them?

A. He said he would wait for his money a while, and if our Union was all right he would consider that they would pay it, no doubt they would, and if they didn't, that I would have to pay it. The other fellows said they would help me if I had to pay it, so that is the way it was taken on, the printing was, as far as I had anything to do

1887 with it, and I was fortunate enough that it went ahead and paid the bill.

Q. Well, now, did anybody—

Q. (By Trial Examiner Ruckel) Do you recall the amount of the bill, approximately?

A. That I couldn't because the original bill was started

at, I believe, around thirty-five dollars, but there was so much added from time to time right there, there was several form sheets of some kind put out, just what they were for now I don't recall.

Q. I see.

Q. (By Mr. Ely) Did anybody, any individual whose name you can recall, suggest to you the formation of this Independent Union?

A. No. It had been talked for some time with the different ones around, being in the capacity I was, repair and maintenance, I got around the plant very thoroughly, every time I would see an adjuster or machine operator out there, I knew them all by name then, it wasn't like it is now, there are so many in there, "What are we going to do about this, we got to do something, by golly, everybody else is getting in on a set-up like this, here we are just sitting."

Q. Did you ever discuss it with any members or any officials of the Western Cartridge Company before you went up to talk to Mr. Dawson, as you told us about awhile ago?

1888 A. Bassett.

Q. Bassett, I mean, that you told us about awhile ago?

A. No, I don't believe I did. I talked to Mr. Dawson, but I believe I had seen Mr. Bassett first.

Q. I say, before you went to Mr. Bassett to inquire of him whether it would be objectionable or not?

A. No. Ferguson and Mitchell, I am pretty sure of them, who I first talked to.

Q. Who?

A. Mitchell and Ferguson, they are employes there, and I believe we decided to go right to the top before anyone else was involved, because if the company took the wrong attitude, that there would be nobody out in the open but myself.

Q. Mitchell and Ferguson are employes there?

A. I believe they are both still there.

Q. They were employed there at that time?

A. Yes.

Q. Don't represent the company in any official capacity in any way?

A. Mitchell was an adjuster, Ferguson was a pipefitter.

Q. Then after you talked to Mr. Bassett, did you continue your activity then among the employes of Western Cartridge?

A. I did until we had an appointed committee.

Q. Who appointed the committee?

1889 A. Well, there was—

Q. How many were on the committee?

A. Frankly, the first meeting I never even sat in on. There was thirty or forty, I should say, in the first bunch that was really pushing the thing along, and they had a meeting in the evening, and I couldn't attend it without losing time, so I didn't see the necessity of being there, because it was for all of us. I had done enough already, let them do something, and they came out with an appointed Committee that night, they met in Mr. Manning's office, I believe, the first night, for that appointment; I had talked to Francis a couple of times.

Q. (By Trial Examiner Ruckel) Francis Manning?

A. Francis Manning, on the legality of this, how far we could go with it, what we could do, because we didn't know what to do about organizing ourselves. I have known Francis for a number of years, and naturally I leaned on him for that.

Q. (By Mr. Ely) Well, at any time prior to the formation of the Union, organization of the Union, did anyone connected in an official capacity with the Western Cartridge Company ever encourage you in any way or offer you any assistance of any kind or help you out in any way or suggest that you form a Union or anything of the kind?

A. No. After I had talked to Bassett, the next day

1890 I was really fired, I guess you would call it, over starting it, by Mr. Meyers. I met him outside at noon as I was trying to see some of the boys. I met them during the lunch hour. They used to come to the parking lot where there was a little building, and I saw him and, heck, I didn't think he would go to any extent after Mr. Bassett had said it was all right.

Q. Who was Mr. Meyers?

A. He was superintendent in the machine shop.

Q. Go ahead, tell what happened then.

A. He told me if I was fooling with that I could

consider myself fired, he didn't want nothing else to do with me whatsoever, and I didn't know what to do, so I went home, tried to call Mr. Bassett, and I didn't get him right then, he was out. Later on in the evening he called back, I left my number for him to call back, and he told me just to skip the incident, that it was something unfortunate.

Q. Mr. Bassett told you that?

A. Mr. Bassett did. He said to go on to work as though nothing happened, and I did, and I heard nothing of it.

Q. Ever have any further discussion with Mr. Meyer about it?

A. No, I figured that was enough to talk to him about it.

Q. Well, outside of Mr. Bassett and Mr. Dawson, did you ever discuss the organization of the Independent Union with any other official of the Company?

1891 A. One day I mentioned it, let's see exactly when that was, I met Mr. P. W. Day, but he had known me and I just asked him what attitude they were taking down there on the thing, and he said, "Well, after all, the office runs such as that."

Q. That is the only mention there was about it?

A. That is the only mention I ever made.

Q. And you told us about your talk with Mr. Bassett?

A. Yes.

Q. Now, what talk, if any, did you have with Mr. Dawson about it?

A. Well, I tried to get him to give me a list of the employes and he told me that he didn't think he could hardly do that, and he said before we did much more we would have to show them how strong we were, and he did tell me the approximate number of employes, and I believe it was twenty-three hundred, or around that figure at that time, I am not positive.

Q. That is, the men employed at that time.

A. Yes, sir, with the company, and therefore, we drew the conclusion that we would have a majority with fifteen hundred, so when we got above fifteen hundred we had a list of them, and I don't recall, someone showed them to George.

Q. Who is George?

A. George Dawson.

1892 Q. Were you present when he showed them to him?

A. No, I wasn't. I work in an off shift, it is a little hard to get in there to see him, and contact him. He seems like a busy man.

Q. You said he showed it to him. How do you know he showed it to him?

Mr. Evans: I move to strike it.

Mr. Ely: I just asked him the question, how did you know he showed it to Dawson then.

Trial Examiner Ruckel: Let it stand.

A. I remember at that time we had the list, and it was either Gerald Schauerte or Mr. Sullivan, one or the other, showed him the list.

Q. (By Mr. Ely) You don't know of your own knowledge that he showed it to him?

A. No, of my own knowledge I don't know if he showed it to him.

Q. Let me ask you this: Did you and others authorize either Mr. Schauerte or Mr. Sullivan to submit a list to Dawson?

A. Yes, we prepared it for that reason. Whether it was shown or not, I couldn't swear for my own knowledge that it was shown.

Q. Although you didn't see Dawson look at it, you know it was prepared for the purpose of presenting it to Mr. Dawson?

A. Yes. After all, we were kind of a free lance out-

1893 fit first, one man had as much to say as the other one.

Q. You never held any office in this Union?

A. I have not.

Q. Prior to this had you had any work, any experience in organization work of any kind?

A. I had not.

Q. How about Boy Scouts?

A. Well, if you want to count the Boy Scouts.

Q. I want to count any kind of organization work.

A. I was a Scoutmaster, yes.

Q. For how long?

A. Well, let's see, I had Troop 18, in Bethaldo, for almost two years.

Q. You had that experience in organizing your Troop and helping other Scoutmasters?

A. My Troop was sponsored by the American Legion, and they did the biggest part of bringing the boys in. All I did was try to train them a little.

Q. How old are you?

A. Twenty-nine.

Q. How long have you lived in East Alton?

A. Ever since I worked with the company.

Q. Twelve years?

A. About fourteen years, fourteen or fifteen.

Mr. Ely: I think that is all.

1894 Trial Examiner Ruckel: Any further direct by the Company?

Mr. McRoberts: That is all.

Trial Examiner Ruckel: Recess until 1:45.

(At this point, at 12:30 P. M., a recess was declared until 1:45 P. M.)

After Recess.

The above entitled matter came on for hearing at 1:45 P. M., pursuant to recess.

Trial Examiner Ruckel: The hearing will be in order. Cross examine.

Cross Examination.

Q. (By Mr. Evans) Mr. Taylor, when was it you had your conversation with Mr. Bassett about the Union?

A. Well, he is the first company official that I talked to about it.

Q. About when was that?

A. Let's see, it was beginning to get warm weather that year when we started to fool with that; I don't remember the exact date on it.

Mr. Ely: Would it be out of order to let him know that the first meeting was dated June 4, 1937? That might help him fix it.

Mr. Evans: Yes.

1895 Q. (By Mr. Evans) I was going to suggest, were you at the meeting at Manning's office on June 4th?

A. No; that is when I stopped, after the rest of the boys took hold of it.

Q. About how long before that meeting was it that you had a talk with Bassett?

A. To be real accurate, I couldn't, but I would say around two weeks.

Q. Between that time and the time Manning was brought into the picture, did you and some of the other men obtain signatures on some kind of sheets of paper or cards of any kind?

A. If I remember, the first sheet we had were something like a regular tablet sheet, only with printing on it for membership, and then we had cards made later, a little form card. I don't believe I had those printed, those form cards. I think they started that right after the committee took it; I believe the sheet is what I had printed, and the little by-law book.

Q. Now, what was it again, that you said to Mr. Bassett, and what was it he said to you?

A. Well, I told him that we would like to have a union of the employes.

Q. Tell him what kind of a Union?

A. Yes.

1896 Q. Tell us what you said.

A. Well, I told him it was going to be an employes' union of our own and I would like to know if there was going to be any objection to operating one, if any of us would lose our jobs, and if we could keep our contract that we had with the company that they sign every year. He said he didn't see why we couldn't have them, and that the company wouldn't bother us as long as we stayed within our rights.

Q. Did he elaborate, state what he meant by keeping within your rights?

A. The only elaboration that you could say he made was the fact that we shouldn't use our time around the plant, standing around congregating and talking about it and soliciting membership on the property there. He said if that was done they would have to take measures about it, possibly.

Q. Did he say anything else in that regard?

A. I believe that is about all he told me then.

Q. Did he explain that that would result in the termination of the contract by the company if the employes did that?

A. No, he never mentioned any reason at all why we should lose the contract.

Q. Was there any other organization attempting to
1897 organize the employes at that time, about that time?

A. To be exact, I don't know; it was told to me by several employes that the C. I. O. was trying in the brass mill, that seemed to be worrying some of them; they didn't want to go to that organization.

Q. Were these persons you talked to around the plant persons that wanted an organization to oppose the C. I. O.?

A. No, we wanted one of our own, we wanted to be independent and by ourselves.

Q. When you talked to Mr. Bassett was there any mention of the fact that the C. I. O. was attempting to organize, and the employes wanted an organization of their own?

A. I hardly think there was. I believe I told him these other places were organizing and we wanted to.

Q. Now, this printing, that was the little document marked Board's Exhibit 6?

A. Well, now, the two we had printed were very similar. The first ones looked about like this, but I believe they were a little heavier than this. Is there another one of these, too, a revised one?

Q. There is an amendment.

A. Well, that might be it. That was a long narrow sheet?

Q. It was the same size as that. Board's Exhibit 7.

A. These two were never put together, then?

Q. No.

1898 A. I thought they were put together. I guess they weren't, at that.

Q. Isn't it true that Board's Exhibit 6, you had three thousand printed, which cost $76.00?

A. I believe so.

Q. And you had three thousand amendments printed which cost twenty-four dollars?

A. Well, I am not so sure about the amendments. I knew of them being printed. I believe someone else, some of the other boys took it down.

Q. Did anybody else guarantee this seventy-six dollar item other than yourself?

A. The only assurance to me the boys gave to Mr. Ghio. I am the only one that assured him that it would be paid.

Q. Did Mr. Ghio ask for any other security?

A. No. I have known Mr. Ghio for some time, he has known me, and that seemed to be enough for him.

Q. Did you have any other promises than what you have described, from the other employes?

A. No. They said we would just have to kind of chip in and pay them if somebody got stuck with it. They would see me through, that was all.

Q. How many so promised you?

A. Well, to say exactly, I wouldn't know. They all seemed to be in favor of it, but just to actually say
1899 they did come to me individually, I don't know what you would say.

Q. Now, when was it you had this conversation with Mr. Meyers in which he stated that he was through with you, or something?

A. That was right after I talked to Mr. Bassett.

Q. This was a couple of weeks before June 1st?

A. Yes.

Q. Just speak up, because the reporter cannot get the nod.

A. Yes, that was a couple of weeks before then.

Q. Now, what was your conversation with Mr. Meyers?

A. Well, all the fellows sat outside there and I was over there talking to him, and as he came out to lunch, big and jovial like he gets sometimes, he wanted to know what I was doing down there and I told him.

Q. You told him what?

A. I told him that I had just been to Mr. Bassett and we were having a little Union organized, we thought.

Q. Did you say what kind of a Union?

A. Yes.

Q. Tell us what you said to him.

A. Well, I told him a little Union of our own, employes' union, and then he didn't give me a chance to say a whole lot, he blew up and told me I was through, he didn't want nothing to do with me. His exact words, I can't
1900 tell you, but he did say that I was not to come around any more, I was fired.

Q. And where were you at the time?

A. Where was I at the time he told me that?

Q. Yes.

A. Right there by the railroad intersection, outside the plant here, there is a little shed was there. I believe the merchandise cars are parked there now under those trees. There used to be a little soda water stand in that little building. The boys sat around it.

Q. That was at lunch hour?

A. At lunch hour.

Q. Did he say anything to indicate whether or not he was referring to the organization of the C. I. O.?

A. No, I know that he knew distinctively what organization I meant when he told me that. He didn't want anything to do with them.

Q. How long were you out?

A. How long was I out?

Q. Yes.

A. I wasn't out. That evening I called Bassett and he told me to come in on my regular shift. I did come right in.

Q. When you had this talk with Meyers was your shift over?

A. I worked four to twelve. This was at lunch hour during the daytime.

1901 Q. Well, then, you had finished your shift that afternoon?

A. I came in and worked my shift that afternoon.

Q. Did you talk to Bassett before you went to work?

A. Over the phone.

Q. (By Mr. Ely) Your shift was four in the morning until twelve at noon, or four in the afternoon until twelve at night?

A. At night, that was the shift I was working.

Q. (By Trial Examiner Ruckel) You talked to Mr. Meyers at noontime?

A. During the day shift's noon hour.

Q. (By Mr. Ely) And you got Mr. Bassett on the telephone before the four o'clock shift started?

A. Yes, sir. I tried to get him right away, and I couldn't, and he called me back then.

Q. (By Mr. Evans) About what time was it that he called you back?

A. I should say around two o'clock.

Q. What was it that was said between you and Mr. Bassett on the telephone?

A. I told him that Mr. Meyers had fired me and, well, I forget his exact words, but he said that was something unfortunate, that shouldn't have occurred, to come on in and overlook it and there would be nothing more to it.

Q. (By Trial Examiner Ruckel) You told him what
1902 it was, did you?

A. Surely, I told him what the situation was.

Q. (By Mr. Evans) And when you got to the gate you weren't stopped, your card was there and you went right on through?

A. That is right, it was there.

Q. Now, when was it you had this conversation with Mr. Dawson about a list of employes?

A. We had had our drive on for a little time there, I don't know just how long it had been on. You mean about, that we had a majority, that is the list you are talking of, isn't it, when I wanted the list?

Q. You made some sort of a statement that you asked Mr. Dawson for a list of employes?

A. That was within the next few days that I asked him for a list of employes.

Q. Where did that conversation take place?

A. Well, sir, let's see, I believe I went in early and asked him that at his office.

Q. Anybody else there at the time, or did you go in alone?

A. I went in alone.

Q. And what was said at that time?

A. Well, at first he seemed like he thought he could give me the list.

Q. Tell us what was said.

1903 A. I asked him for the list and he said, well, he didn't know why he couldn't, and then some other business came in there, I forget who it was came by and talked to George a minute, it was not pertaining to this—

Q. (By Trial Examiner Ruckel) By George you mean whom?

A. Mr. Dawson: and then it seemed like on second thought he decided he can't give me one, so he wouldn't give it to me.

Q. (By Mr. Evans) Did he give you any reason?

A. Well, he said he would have to consider it more, and it seemed like he never did get it considered.

Q. Was that all that was said at that time?

A. I think it was.

Q. Anything else said, anything said about a majority at that time?

A. I saw him a number of times along there for a few minutes at a time; whether it was that time or not, I couldn't say. On nearly every time he would ask us if we had a majority when we were talking. That seemed to be the biggest thing.

Q. That they kept asking you whether you had a majority?

A. Any of them would when you would talk to them long.

Q. (By Trial Examiner Ruckel) Who do you mean by they?

A. Any of the boys or Mr. Dawson, those fellows, I don't remember, the other fellows that were helping us along.

1904 Q. (By Mr. Evans) Any other company representative ask you about that other than Mr. Dawson?

A. No, I don't believe so.

Q. What did you tell him, that you hadn't got a majority yet, something to that effect?

A. Well, the first time he asked me, I told him I would have to check up. We were trying to compile a list of them then, membership was coming in, first one fellow would have something, we didn't really know whom we were soliciting, you couldn't hardly tell from one membership to the next what membership we did have, and I told him I really didn't know, and after that, after we got around fifteen hundred, is when we first started talking to them really about the organization, because we felt we had a majority.

Q. About how many times did he ask you whether you had a majority, talking now about Mr. Dawson?

A. Well, I would say three or maybe four times.

Q. And this was in the period from the time you talked to him, about the middle of May, about to what time?

A. Until right after about when these fellows took over, this self-appointed board, you might say.

Q. That is around June 8th?

A. Well, whenever their first meeting with Mr. Manning was.

Q. That was June 4th.

A. Was that the 4th? Whatever period that is.

1905 Q. In a period there of two or three weeks?

A. Somewheres along in there, yes.

Q. Now, did you turn over these lists of names to the Union, that is, this self-appointed committee, as you call them?

A. I am just trying to think who was helping compile that list. I believe it is Mr. Sullivan helped us make this list. I know Mr. Schauerte was in on it, Gerald Schaurete. I think they had it with them when they had their—I am rather sure they had it when they had their first or second meeting there with Manning.

Q. Do you know whether they compiled the list from the signatures that you and your group solicited?

A. That is what it was from.

Q. It wasn't taken from these little cards that they later on signed?

A. No. That was later made as part of a permanent record. It seemed like there was too much of a mix-up, so we had taken them, so many taken them in and so many waited awhile to turn them in a bit, and it was lost, and some of them would say, "Why, I signed one of them already." They didn't have nothing to show for it, in a way. They signed a slip, but I don't believe they had anything there at first to show for it, although we didn't take money at first.

1906 Q. Did you have any other printing done for which you stood as credit for the bill?

A. No, I hardly think so. I believe this first, that little book, when you got to this one here, they already had it.

Q. The amendment, Board's Exhibit 7?

A. I think there was a white sheet printed that was about the size of a loose-leaf sheet, with something on it.

Q. Some kind of a dodger or announcement or something?

A. Kind of letting them know what we done. Exactly what it is, I don't know. I might be wrong on that, but I know I started to have one printed; whether I did or not I can't recall.

Q. Did you ever have any printing done by Mr. Ghio before?

A. Only Christmas cards and that.

Mr. Evans: That is all.

Re-Direct Examination.

Q. (By Mr. McRoberts) Do you know where Mr. Schauerte is now?

A. Really, I don't.

Q. He is no longer here in Alton, is he?

A. He is not with Western. His mother lives in Alton, doesn't she? You could find out from her.

Q. You don't know where he is now?

1907 A. No.

Mr. McRoberts: That's all.

Trial Examiner Ruckel: I have one or two questions.

The Witness: All right, sir.

Q. (By Trial Examiner Ruckel) During these conversations you had with Mr. Dawson, I believe, in which the question of a majority was mentioned, did Mr. Dawson, did I understand you to say in your direct testimony this morning, indicate how many would constitute a majority?

A. No. If I remember right, it was twenty-four hundred he told me was the employe roll, or around that, and that was our own idea, that a majority would be fifteen hundred, that that would give us a good majority.

Q. I think this morning you went on to state that later you found that the total roll, payroll was larger than that?

A. I believe it was larger before we got organized, they had taken on some more; just what number that was, I don't recall very plainly.

Q. After Meyers told you that you were through, or words to that effect?—

A. Yes, sir.

Q. —did you have any further conversation with him?

A. No, I steered pretty clear of him.

Q. I don't mean at any other time, I mean at the same conversation, was that the last thing said?

1908 A. Yes, that is the last thing said. He is pretty hot headed, and when he said that he was ready to leave me right now.

Q. Didn't you tell him you had talked to Mr. Bassett?

A. I had told him that first, and he was talking about it, and he asked me what I was doing there.

Q. What was your shift at that time?

A. The shift I worked?

A. I came in at four o'clock in the evening and worked until twelve o'clock at night.

Q. This conversation with Mr. Meyers, that was when?

A. During the day shift lunch hour, twelve o'clock noon that day.

Q. Were you working the day shift, too?

A. No, I had come down to the plant to see these boys that were outside there, they come out to that little shanty, some of them do, smoke a cigarette and stand around.

Q. (By Mr. Ely) You had talked to Bassett the day before, or that morning, when was it?

A. I believe it was that morning.

Q. (By Trial Examiner Ruckel) And this was outside the plant gates?

A. Outside the plant gates.

Q. Mr. Meyers came on through and went outside the gate?

A. That is it. I believe he was going to his car over 1909 there in the parking lot.

Q. You say that this list which you furnished Mr. Dawson was compiled from certain pieces of paper or cards which you yourself circulated before the more formal cards were printed, is that right?

A. Rather a loose affair.

Q. But I thought that you said in explanation of the company's later getting some cards, that it seemed like they wanted a more complete what?

A. They wanted to definitely know what we had and the employes wanted to definitely have something to show that they belonged or didn't belong. No one took any certain department, we just got whoever we could as a member when we would see him, and in that way you had maybe two or three fellows approaching one man.

Q. Do you know whether or not, of your own knowledge, printed cards were ever shown to Mr. Bassett or Mr. Dawson?

A. No, I really don't know for sure that they were. The membership list was supposed to have been shown to him at one time.

Q. Well, but that is the list you have already referred to as being compiled on the more informal membership cards which you had circulated?

A. Yes.

Q. So far as you know, was any further list or further cards shown Mr. Dawson or Mr. Bassett?

1910

A. No. To be positive on that, I couldn't, because that was right up close to the time I ceased being with them.

Q. You ceased being with whom?

A. With the Union. I didn't go ahead with it then. I never held any office in this Union whatsoever.

Q. Between the time you showed Mr. Dawson the list of names taken from these slips, and the time that you ceased to have anything to do with the Union, how long a lapse of time was there?

A. Well, that was just a few days, I believe, in there, because it was—my entire career, I might say, wouldn't cover over two or three weeks after we started in.

Q. With the Union?

A. With the Union.

Q. What was the reason you ddin't continue with it?

A. Well, I had a day shift to work, and after having that talk with Mr. Meyers, I thought I might have more trouble with him, and it was functioning very nicely without me.

Q. Was there any disagreement between you and those who subsequently took over the organization?

A. No, there was no reason there. I was told by any number of the boys that were on the Board, originally upon it, why didn't I stay in there and run for an office,

1911

but I really don't care for an office like that, I would prefer not to.

Trial Examiner Ruckel: No further questions.

Re-Direct Examination.

Q. (By Mr. McRoberts) Mr. Taylor, when you say you ceased to have anything to do with the Union, you remained as a member, did you?

A. I remain as a member to this day.
Q. You simply ceased to be active in organizing?
A. That is right.
Q. Running the business of the Union?
A. Flunkey for them.
Mr. McRoberts: That is all.

Re-Cross Examination.

Q. (By Mr. Evans) Wasn't there discussion between you and the temporary committee that took over, about your having printed these constitutions?

A. Wait a minute. I don't believe there was on that. Some of them thought we printed them a little too quick, but I don't think there was much discussion on that. Later on, the only time I ever heard from them again was when they got their bill from their lawyer, and they thought it was too high. They kind of thought they ought to give me heck for it, but they could have fired him at any time. I never really, you might say, I never 1912 really hired him myself. I just was running up there and asking a few questions, and they took over where I left off. If they didn't want him, they could have fired him.

Q. Did you pay the printer?

A. I never paid any bill whatsoever. After they took over they assumed them. I don't believe there was any bills paid until sometime the last of the temporary committee's history. They might have paid some.

Mr. Evans: That's all.

Re-Direct Examination.

Q. (By Mr. Ely) One question which may be clear and which may not be: It is a fact, isn't it, that you had these constitutions printed, copy of the constitution printed, without consulting Mr. Manning at all?

A. This constitution, yes, sir, I am rather sure I had that beforehand.

Q. That was your own idea, and you got that from this Standard Oil Company Union, is that right?

A. I know it all came from the Standard Oil Company's

two books, one from the Sugar Creek Refinery, one from Wood River. The only thing we added was this part where it pertains from our plant itself.

Q. (By Trial Examiner Ruckel) By Wood River Refinery you mean at Wood River, Illinois?

A. It is called the Standard Oil Wood River Refin-
1913 ery, yes, sir.

Q. And the Sugar Creek is where?

A. Is down in Arkansas, I believe. Where it is at, I don't know. Mr. Council, at the Wood River Refinery had the pamphlets I got.

Mr. Ely: That is all.

Mr. Ely: Might as well have this second book marked, the one that we had the stipulation on. It goes from August 6, 1940, to December 12, 1941. Let that be marked as Independent Union's Exhibit No. 2.

(Said document marked by the reporter as "Intervenor's Exhibit No. 2", for identification.)

Mr. Ely: I believe I will just offer it under the same circumstances that I offered these other books.

Trial Examiner Ruckel: It was previously identified, was it not, by the witness.

Mr. Ely: No, it was not.

Trial Examiner Ruckel: That was stipulated?

Mr. Ely: Yes.

Trial Examiner Ruckel: Intervenor's Exhibit 2 admitted in evidence subject to the same qualifications as Intervenor's Exhibit 1 and Respondent's Exhibit 25.

(Said document marked "Intervenor's Exhibit 2", was received in evidence.)

Mr. Ely: And offered on the same basis.

1914 Mr. Evans: Just what is this?

Mr. Ely: That is just the additional minutes following up the ones which I had already identified, and signed by different persons than Mr. Sullivan.

Mr. Evans: So as to keep the record straight you said that this book, your Exhibit No. 1, only went up to a certain date?

Mr. Ely: That is right.

Mr. Evans: Now, is Intervenor's Exhibit 2 the rest of that book and the next book?

Mr. Ely: No, Intervenor's Exhibit 2 doesn't start until 1940, August, 1940, to December 1, 1941, but it is signed by other secretaries, one of them Mr. Aughenbaugh. Mr. Evans is still willing to stipulate that the other secretaries following would testify the same as Mr. Sullivan had, on the minutes.

Mr. Evans: Which is the rest of that book?

Mr. Ely: Exhibit 1 goes from July 22, 1937, down to July 31, 1940, that is the last minute in Exhibit 1. Exhibit 2, the first minute is dated August 6, 1940, and the last minute, December 1, 1940. My reason for offering them as I did, asking the stipulation which you and I entered into, was just to save the time of having each set of their minutes identified by separate secretaries. That is satisfactory, isn't it?

1915 Mr. Evans: Yes. I just wanted to be sure on that.

Mr. Ely: Yes; that is right.

BERKLEY WILMERING,

a witness called by and on behalf of the Intervenor, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Ely) What is your name, please?

A. Berkley Wilmering.

Q. Where do you live?

A. I live at the Fairgrounds Hotel, St. Louis, Missouri.

Q. By whom are you employed, Mr. Wilmering?

A. I am employed by the St. Louis Ordnance Plant.

Q. Did you formerly work here in East Alton for the Western Cartridge Company?

A. I did.

Q. In what capacity?

A. I worked on three different jobs while I was with Western Cartridge Company.

Q. What was your first one, and when was it?

A. My first one was in 1934, I believe, approximately about the month of April. I was employed by Western Cartridge Company as a solids man, which was checking solids on explosives in laboratory work, analyst.

Q. Then go on from there.

1916 A. From there I became a mix man, which was a mixer of explosives, and I also was a cart man, deliverer of explosives.

Q. Were you employed as cart man in June, around June, 1937?

A. June, 1937, I was a mixer at that time.

Q. Mixer?

A. Yes.

Q. And when did you leave the employ of the Western Cartridge Company at East Alton?

A. I left the employ in April of this year.

Q. 1941, last year?

Q. That is right. Pardon me.

Q. We haven't got to April of this year yet.

A. That is right, just had New Year, didn't we?

Q. Yes, sir. Now, were you active in or do you know anything about the organization of the Western Cartridge Employes' Independent Union?

A. I was very active in the organization of the Western Employes' Independent Union; knew considerable about it.

Q. What did you do in connection with the organization of that Union, with whom did you work, if anybody?

A. Do you want me to start from the beginning?

Q. Start from scratch and go right ahead, that is the shortest way to get rid of it.

1917 A. My first connection with Western Cartridge Employes' Independent Union was in the year of 1937.

Q. What time of the year?

A. It was along—the exact date I cannot give, because it was too far away, but it was along at the start of the Union.

Q. The first minute is dated June 4th, 1937, if that will help you any.

A. That doesn't help, because I don't recall the exact date.

Q. All right.

A. But the temporary board started to function before I became a member. My first contact with the temporary board was with Charley Taylor, I went to his home. I understood that the organization was under way and I was interested in becoming affiliated with the organization. I

met Mr. Taylor at his home, made his acquaintance, and the next meeting I had with the temporary board, they had called a meeting at Mr. Manning's office and I attended that meeting. Mr. Taylor notified me as to the time it was to be held. From that point on I followed the Independent Union, serving as a member of the temporary board during the election adopting the constitution, was elected by majority vote in Division 6, representative of that division as Executive Board member, I was re-elected to
1918 the same position, and I served one term as secretary and treasurer of the organization. That is in short.

Q. Did you succeed Mr. Keefe as secretary-treasurer?

A. No.

Q. Mr. Keefe succeeded you?

A. That is right.

Q. Mr. Keefe was between you and Sullivan?

A. No; Mr. Keefe succeeded Mr. Sullivan and served one year, and I succeeded Mr. Keefe.

Q. I say, Mr. Keefe was between you and Sullivan?

A. Yes, that is right.

Q. And did you have any dealings with any official of the Western Cartridge Company?

A. Yes, sir.

Q. In the organization of the Independent Union?

A. In the organization?

Q. In the organization of it.

A. No, they had nothing to do with the organization of it, the Western Cartridge Company officials had no part to my knowledge in the organization of this organization.

Q. Did you talk to any of the officials of the Western Cartridge Company or did any of them talk to you or did anyone talk to them in your presence, with reference to the organization of this Union?

A. No, sir.

1919 Q. Then, after the Union was organized, did you have dealings with them?

A. Yes, sir.

Q. In what capacity did you deal with them after the organization?

A. The first time I met any of the major officials of the Western Cartridge Company, except my immediate super-

visor and my boss in the powder mill, was the first meeting of the Executive Board with company officials, and at that meeting I met Mr. Olin, Mr. John Olin, Spencer Olin, Mr. Bassett and Mr. Dawson and Mr. Peterson.

Q. What transpired at that meeting between you, and I don't mean just you individually, but I mean between the officials of the Union and the officials of the company?

A. At that meeting it was—

Q. And when was it, about?

A. There are minutes that will verify the date, I don't recall; I will be glad to look it up if you want the exact date.

Q. Was it when you were secretary and treasurer?

A. No, this was the first meeting, the first meeting that we ever held with the company.

Q. All right, go ahead, what transpired at that meeting?

A. At that meeting we demanded recognition. We had a list of already adopted plans of attack, you might
1920 call them, or things that we desired to accomplish by the Union, and that was presented at that meeting, and naturally, the first thing was to get recognition, that was a major point. At that meeting the company desired to know if we had a majority of the employes; in other words, they took no part one way or the other. They merely asked us if we voiced the sentiment of the majority of the employes. We stated that we were. A meeting was held recently after that in which at that meeting we agreed that our attorney, who happened to be Mr. Manning—

Q. Francis Manning?

A. Yes, Francis Manning, and the company attorney, Senator Williams, I believe, is the attorney.

Q. George H. Williams?

A. Yes. Should get together with the Union officials, and the company officials, acting as their representatives, and adopting recognition where the company would recognize the Union if we held the necessary majority, and we would in turn collectively bargain for the people whom we represented. That was brought about by the basic agreement. I presume you heard about it.

Q. And then did you bargain with the company officials under that?

A. Yes, we did, we carried on negotiations and collective

bargaining, representing the people with these com-
1921 pany officials acting in behalf of the company, up until the expiration of my time in office, which was in August, 1940.

Q. What part did you play in the carrying on of those negotiations, bargaining with the company?

A. If you have the minutes, which you say you have here, and you go through the minutes, you will find that many resolutions, many requests moved by Berkley Wilmering was asked to meet our demands, some of them were met, some of them were not. However, the company always gave us a hearing and we discussed things, and as far as it was carried, the plans were made to the extent of—or refused, one or the other.

Q. Well, did you at any time have any understanding, tacit or otherwise, or any agreement or any statement between you or members of your Union and representatives of the company, other than through your bargainings that you had?

A. Will you re-state that? I didn't quite get the question.

Mr. Ely: Will you read it, please?

(Question read.)

A. No, that was all represented through the Executive Committee and the officials designated by the company to bargain with us. Those were the only people that we ever dealt with.

1922 Q. What did you bargain about, Mr. Wilmering?

A. Wages, hours, working agreements, things of that type; also personal cases to the extent of where one of our members had, as we felt, been infringed against by some supervisor or some company policy, and many of them were satisfactorily settled.

Q. Vacations?

A. Vacations was one, yes. Many problems.

Q. Just whatever problem came up?

A. That is right.

Mr. Ely: That is all.

Further Direct Examination.

Q. (By Mr. McRoberts) Mr. Wilmering, Mr. Ely asked you whether you had any dealings with officials of the

company in connection with the organization of your Union. Did you have any dealings with foremen or any other supervisory officers of the company in connection with the formation of your union?

A. I did not.

Q. Did any foreman or supervisory officer ever suggest to you that you join the Independent Union?

A. No, sir.

Q. Or, so far as you know, suggest to anybody else that they join your Union?

A. So far as I know there was never any assistance
1923 or coercion of any type used by company officials to any employe or executive member.

Q. None of this original group that organized this Union were supervisory employes, were they?

A. Not to my knowledge.

Q. And were any foremen or supervisory employes admitted to membership after that?

A. No, there was no membership.

Q. (By Mr. Ely) I will ask one other question: Did the company or any officers or employes of the company other than members of your Union, of course, ever pay any bills of the Union or give the Union any money or give you or any member of the Union any money?

A. No, sir, not to my knowledge, at least.

Q. (By Mr. McRoberts) Mr. Wilmering, in the minutes, at a mass meeting of November 4, 1939, being part of Independent Union's Exhibit No. 1, appears this statement, see if this recalls what took place at that meeting: "Mr. Wilmering compared the wages of Western Cartridge Company with other industries in the State of Illinois, and contended that the Union members lacked punch and drive necessary to put fear in the executives of Western Cartridge Company." Do you remember making some such statement as that at that mass meeting?

A. I remember making many statements to the em-
1924 ployes, not only that statement, but many others, that they lacked the punch and drive necessary to put the fear in the officials of the Western Cartridge Company to meet our demands when they were refused. However, it was not from the coercion of the officials of the

company, it was merely the laxness of our own membership.

Mr. Evans: Move to strike the conclusion of the witness.

Trial Examiner Ruckel: It may be stricken.

Mr. Ely: He isn't stating a conclusion, he is stating what he said, isn't that right?

Q. (By Mr. McRoberts) Is that what you said at these meetings, what you have just stated?

A. My statements in the mass meeting was this, that the employes themselves needed to be trained and also taught Union methods of organization and of punch and drive necessary to make a working organization, that it was a training program. I think you will find that in several of the minutes, that we had to teach the employes of Western Cartridge Company as executive members, that they were not exactly Union minded. It was a beginning organization, and we were representing it as executive members, and that they had a right to bargain with their employer through his executive members. We tried, in other words, to let the people who had not
1925 previously been organized, teach them that we were the bargaining agent and representing them under the laws of the State.

Q. And was it your position that if they did that they could press their demands to better advantage?

A. We could press our demands as they become educated and realized that we had a working organization and that we had power given us by the State and could control them to that extent. In other words, that we, as members of the Executive Board, leading a training program, that we had those rights. Previously to this time there, to my knowledge, had never been an organization at Western Cartridge Company.

Mr. Ely: Pardon me. Mr. Manning has come in. Do you have any objection to him coming in? He will be called on to testify concerning much of the same material.

Trial Examiner Ruckel: Mr. Manning, would you mind stepping out somewhere? I am not sure where counsel keeps his next witness. Wherever that is, will you please go there.

Mr. Ely: I will call you next, Mr. Manning, to save as much time as we can.

The Witness: May I make another statement?

Q. (By Mr. McRoberts) Please.

A. I would like to add in connection with that, that at no time to my knowledge, and as I say, I was
1926 quite active in the organization, was there ever any insinuation by any company official in any way whatsoever, manner or otherwise to any employe to act or restrain them from joining the organization, or any assistance in any manner or in favor or trying to persuade or give them an inkling that they desired that they join our organization. There is nothing, to my knowledge, that that ever occurred.

Mr. Evans: Move to strike the voluntary statement of the witness, having no probative value.

Trial Examiner Ruckel: He said that substantially before in response to questions. He says he knows of none, he doesn't say it did not occur.

Q. (By Mr. McRoberts) Mr. Wilmering, did you ever get, did your Union ever get anything from the company that they didn't demand and fight for?

A. No, sir.

Mr. Evans: I object to that.

Trial Examiner Ruckel: Objection sustained.

Mr. Evans: A very leading question counsel is asking.

Trial Examiner Ruckel: It may be stricken.

Q. (By Mr. McRoberts) Going back to this question, this reference in the minutes to the necessity of the members organizing and strengthening in order to put fear into the officials of the Western Cartridge Company, for what purpose did you want them to so organize to
1927 create that fear, what were you going to use that for?

A. The main idea in the beginning—

Trial Examiner Ruckel: Just answer that more simply, so as to get better wages and working conditions, is that it?

A. I would say yes, that the employes, by uniting, had a better opportunity to get their demands through than individually as one, for better working conditions, wages and other terms of the contract of employment.

Q. (By Mr. McRoberts) Do you happen to know where Mr. Schauerte is?

A. Schauerte? I do not.

Mr. McRoberts: That is all.

Cross Examination.

Q. (By Mr. Evans) You say you are now working for the U. S. Cartridge Company at St. Louis?

A. I am.

Q. That is a subsidiary or affiliated company of the Western Cartridge Company?

A. It is an ordnance plant under Western Cartridge Company management.

Q. And what is your position there?

A. My position is superintendent primer and tracer manufacture.

Q. How many men do you have under you super-
1928 vision at the present time?

A. I am afraid I cannot answer that question, as we are not allowed to make statements of that type.

Q. (By Trial Examiner Ruckel) What do you mean by that, who cares whether you have got ten or twenty?

Q. (By Mr. McRoberts) Is it a substantial number?

A. It is a substantial number. I have been asked to refrain by the Ordnance Department from making any statements concerning the work.

Q. (By Trial Examiner Ruckel) Wait a minute; concerning the number of people who work under you?

A. Yes, sir.

Q. Do you interpret your general instructions to include that?

Mr. Ely: I think that is a fact. They are definite instructions.

A. That is definite instructions.

Q. (By Trial Examiner Ruckel) What are your definite instructions?

A. The definite instructions are not to state even approximately how many people will be employed by the plant in a department, in method of manufacture, in method of explosives or materials that are to be used, as this is all confidential material entirely, in the department that I work in.

Q. Are you the head of a department?

1929 A. I am the head of the department, I should say superintendent of the department.

Q. You may be excused from answering.

Q. (By Mr. Evans) When did you say you ceased work for Western Cartridge Company?

A. The month of April of this last year, 1941.

Q. And you then went to Philadelphia?

A. Yes.

Q. At the expense of Western Cartridge Company?

A. As a trainee, at Frankfort Arsenal.

Q. And there you received your training for your present position?

A. That is correct.

Q. You are paid in your present position by the U. S. Cartridge Company?

A. That is correct.

Q. Not by the Federal Government?

A. By the U. S. Cartridge Company our checks are made.

Q. Were you a temporary officer before the permanent officers were elected in 1937?

A. I was not a temporary officer, but I was a member of the temporary board.

Q. That was just sort of a self-appointed organizing group?

A. Yes, it was merely a group of men at the time I 1930 entered, I do not recall the exact number, but several men, in which I met Charley Taylor, was introduced to the other men, and joined the Board. There were something like sixteen men on that Board, approximately, as I recall.

Q. Did you get a charter from the State?

A. I don't think we ever received a charter from the State.

Q. Did you ever apply for one?

A. Not that I know of.

Mr. Ely: I object to that, because the State of Illinois will not grant a charter, you can't get one under the law.

Mr. Evans: He said they were duly organized under State law. I am trying to get at—

Mr. Ely: I don't think he said that exactly, he said when he was talking to the members, he said something about State law. Anyhow, he couldn't get one under the laws of Illinois.

Trial Examiner Ruckel: Continue. He said none was ever applied for, as he knows of.

Mr. Evans: Except during 1937 the State did incorporate Labor organizations, and it was a later date that the Attorney General ruled otherwise.

Mr. Ely: Under the National Labor Relations Act, maybe I misstated what I should have said, it gives us a
1931 right to organize.

Q. (By Mr. Evans) I will show you Board's Exhibit 8 for identification and ask you to state whether you ever saw the original of that, whether you signed it?

A. Yes, sir, I did sign that.

Q. Do you know whether or not it was submitted to the company?

Mr. Ely: What is that?

(Mr. Evans hands same to Mr. Ely.)

The Witness: It was submitted to the company?

Mr. Ely: Oh, yes.

Q. (By Mr. Evans) On or about the date it bears?

A. That is too far for me to state as to the date.

Q. I show you Board's Exhibit 9, and ask you to state whether or not you signed that document or the original of that document?

A. I signed that document. It was submitted to the company.

Q. And thereafter a meeting was held?

A. Yes, sir.

Q. Do you recall about how long after?

A. A short time after the first contact with the company that that meeting was held, a matter of days.

Q. To refresh your recollection, I hand you Respondent's Exhibit 25, and refer you to July 29, 1937, minutes,
1932 in which they referred to conference held with representatives of the company. Is that the conference that you refer to?

A. Yes, this is the conference I refer to. The conference that this refers to is for the working—the basic agreement. This is the working agreement, this is not the basic agreement. This conference refers to the basic agreement, as well as I recall at this late date.

Q. Is that what the minutes refer to, refer to a meeting of Mr. Keefe and Mr. Manning, with the attorney for the company for the purpose of drafting a working agreement, is that what is referred to there?

A. This meeting, as I recall, is not very clear in the minutes here, but as I recall, Virgil Keefe was the man that was designated by the Union Board, to meet with Mr. Francis Manning, attorney for the Union, who in turn was to meet with the attorney designated by the company officials, who happened to be later designated as Senator Williams, and one member, if they desired, of the company officials to make a quorum for drafting the basic agreement, which was later done.

Q. Basic agreement or working agreement?

A. Basic agreement.

Q. That is not what it says in the minutes, though?

A. I don't know what it says in the minutes, but that is what they agreed to do.

1933 Q. The minutes are there?

A. Yes, the basic agreement.

Q. There was no discussion, then, following the first meeting of the company of having a working agreement?

A. The working agreement was—this agreement had been drawn up by the members of the Board.

Q. Talking about Board's Exhibit 9?

A. Yes, Board's Exhibit 9, and it was mentioned, but at the time that we met in the first meeting with the company, as I say, they took every step that they should, as officials of the company, and recognizing that recognition should be granted on proving that the majority of the employes affiliated with the Independent Union by the election we had held.

Q. Is that what was said at that meeting?

A. Yes. It was asked that we designate and prove to them that we did hold a majority of the people, which was later done by the Union.

Q. Did you participate in that yourself?

A. No, I did not participate in that.

Q. You don't have any personal knowledge?

A. No personal knowledge.

Q. In other words, at that first meeting the Company did not grant recognition to the Union, is that correct?

A. No, as I recall they did not grant recognition of

1934 the first meeting. They asked for the proof that we had the proper number of people, that we represented a majority.

Q. Now, referring to the next minute, those of August

2nd, it appears from the minute that attorney Francis Manning made a report on a conference with attorney for the Western Cartridge Company?

A. Yes, sir.

Q. Do you recall what it was he reported?

A. No, I don't, I don't recall the exact statement of Mr. Manning on that meeting of August 2nd.

Q. It also appears from the minutes that there was a motion passed that a new contract be drawn on the working agreement?

A. Yes; to which I was opposed.

Q. What was the difference, what was the argument about, what was said?

A. According to this minutes of the meeting, which probably more correct than my memory at that late date, it appears that a new contract be drawn on the working agreement between the Western Cartridge Company and the employes, but that the investment feature be retained. This investment feature refers to the individual contract that is in force at Western Cartridge Company that it is offered by the company and signed individually by each employe who desires to participate. It is mandatory whether or not the employes can either sign or not sign, as they desire.

1935 Q. (By Mr. Ely) You mean it is not mandatory?

A. It is not mandatory, they can either join and receive the investment feature or not. It is not enforced upon them. On this I voted nay.

Q. (By Mr. Evans) You voted nay to what?

A. To the motion that was placed on the floor.

Q. What was the original contract as submitted and what was the motion for a new contract, what was the distinction?

A. The distinction being that under the new contract it was suggested that they keep the investment feature. In other words, the individual contract—may I see that Exhibit No. 9 that you just had.

(Mr. Evans hands same to the witness.)

Q. (By Mr. Evans) Your proposals contemplated the elimination of the individual contract?

A. This first proposal, you are speaking of Board 9?

Q. Board 9 is that it?

A. Reading from it—

Trial Examiner Ruckel: Never mind reading, just answer the question.

The Witness: Will you repeat that question?

Mr. Evans: Will you read it?

(Question read.)

Mr. Ely: He referred by the proposal to Exhibit 9. I object to it, because the exhibit speaks for itself. If
1936 you don't want the witness to state his conclusion on it, let the witness say what it means.

Trial Examiner: He may answer.

A. According to Board 9 there was to be a continuing of the existing contract, so far as applicable to the relation between the company and the employe, and that is not very definite.

Q. (By Mr. Evans) Well, did you help draw up those proposals?

A. I was a member of the temporary Board, yes.

Q. In effect you helped draw up those proposals?

A. Yes, sir. On that particular point I might add that at the time they were drawn by the temporary board, I was opposed to that particular point, though I was overruled.

Q. You were opposed to the elimination of the individual contract, or you favored elimination.

A. I favored the elimination of the individual contract.

Q. (By Trial Examiner Ruckel) What did this first proposal do, Board's Exhibit 9, did it propose to eliminate it or stand by it?

A. No, it says—

Q. What is your recollection of it?

A. My recollection was just as stated here, continuing of the existing contract so far as it was applicable, whatever that means, just exactly, as I say.

1937 Q. Who was to determine the applicability?

A. That is to be determined—

Q. By the company, is that right?

A. Not necessarily.

Q. Any provision made for any other?

A. I would say by collective bargaining between the company and the Union Officials.

Q. Unless that is provided for in some contract, the company retains the power to determine the applicability.

Mr. McRoberts: Are you asking this witness that question?

Trial Examiner Ruckel: Yes, I am asking his opinion of it.

Mr. Ely: That is a question of law and calls for a conclusion. I object to it. It speaks for itself.

Trial Examiner Ruckel: We should have his opinion, what it is.

Mr. Ely: But you haven't permitted him to state anything that even resembled a conclusion that I asked him or that anybody else asked him. I don't know why you should be permitted to ask him conclusions.

Trial Examiner Ruckel: He based a further action upon it, that is, the action of the subsequent meeting. Therefore, his opinion of what it is, whether correct or not, is relevant. He is not a lawyer, he doesn't know.

1938 Q. (By Trial Examiner Ruckel) At a subsequent date what did you do? You opposed the inclusion or the maintenance of the individual bargaining contract, or you opposed it?

Mr. McRoberts: This witness himself?

Trial Examiner Ruckel: Yes.

The Witness: I answered that question.

Mr. Ely: Answer the question.

A. I opposed the individual contract.

Q. (By Trial Examiner Ruckel) You opposed keeping it, is that right?

A. That is right.

Q. Was it your then opinion that this provision, which you say is ambiguous, of Board's Exhibit 9, proposed the abolition or the continuance of the individual contract?

A. On the very face of this provision in Exhibit Board 9, it does not show.

Q. I am asking what your opinion was.

Mr. Ely: He just told you.

A. I just told you my opinion, Mr. Examiner.

Mr. Ely: He said in his opinion it didn't show.

A. It doesn't show.

Mr. Ely: You asked him what it showed.

Q. (By Examiner Ruckel) Board Exhibit 9 does not

show, but what was your opinion as to whether your organization had insisted upon the maintenance or the
1939 abrogation of the individual contract, your committee.

A. The committee favored it, because it was adopted in the agreement that we asked for. I was overruled.

Q. The committee favored keeping it?

A. The majority favored keeping it.

Q. And you opposed it?

A. And I opposed it.

Q. And at this subsequent meeting you stated your opposition to it, is that right?

A. Yes, sir, I stated opposition to it.

Mr. Ely: I believe, Mr. Examiner, it says here, under figure 2, the continuity of the existing contract.

Trial Examiner Ruckel: Yes, but the witness says it was ambiguous. I merely wanted his opinion what he thought so we can make some sense out of his subsequent attitude in this subsequent meeting.

Mr. Ely: They should have used another word than continuity.

A. That is right. That was one reason I stated it was ambiguous on the face of it. I think his—

Trial Examiner Ruckel: Don't express your opinion unless you are asked. Continue.

Q. (By Mr. Evans) As I take it, then, you opposed submission of a new contract which carried with it the investment feature of the individual contract, is that right?
1940 A. I opposed the individual contract.

Q. (By Mr. Ely) Any individual contract?

A. Any individual contract.

Q. Regardless of what it carried?

A. Yes.

Q. (By Mr. Evans) At the meeting of August 2nd the minute shows that there was a motion for a new contract on a working agreement between the parties, but that the investment feature be retained. Now, was that to be a new contract between the Union and the Company, which included the investment feature of the individual contract?

A. The question you are asking me, the meeting of August 2, 1937?

Q. That is right.

A. As stated by the minutes, that a new contract be drawn on the working agreement between the Western Cartridge Company and the employes, but that the investment feature be retained. I voted no.

Trial Examiner Ruckel: That wasn't the question.

The Witness: How?

Trial Examiner Ruckel: That was not the question. Read the previous question.

(Question read.)

A. It is not clear.

1941 Q. (By Trial Examiner Ruckel) What do these minutes refer to, what is the meaning of that paragraph, when it refers to a contract, what is meant, what contract?

A. The working agreement here does not show which contract it refers to.

Q. You mean the minutes don't?

A. The minutes does not, yes.

Q. What is your recollection?

A. My recollection is it refers to a contract or working agreement.

Q. That was the discussion in the meeting, is that your recollection?

A. Yes, that is right, and that I opposed, that the investment feature be retained.

Q. That is, you were an advocate of the abolition of the investment feature from the contract between the employes and the company, is that right?

A. The individual contract, as it was known, yes.

Mr. Ely: He was opposed to the individual contract itself, any individual contract.

Trial Examiner Ruckel: And to its inclusion in any agreement between the men and the company?

Mr. Ely: I don't see why the Examiner keeps putting that in, because the witness said he was opposed to any individual contract with or without the investment

1942 feature, is that right?

A. That is correct. My contention was the agreement of the Board, the mutuality of the agreement had

been accepted by recognizing us as the bargaining agent for all employes, that was sufficient.

Q. (By Mr. Evans) Mr. Wilmering, isn't it a fact that the motion called for a working agreement, which included the investment feature?

A. The motion that you are referring to is this same paragraph, are you?

Q. That is right.

A. The motion as stated here on the minutes of August 2nd—

Q. I am not asking you what the motion stated, I am asking you what the fact was.

A. The fact was that there was to be a working agreement to be adopted and to be drawn up and to be accepted, to be presented, and possibly negotiated upon for acceptance between the officials of the company and the Executive Committee.

Q. Which included an investment feature?

A. That is correct. That was added in, as it should be. I was opposed.

Q. You didn't want any investment feature in a working agreement?

A. I didn't care for the investment feature in the 1943 working agreement, which recognized the individual contract, correct.

Q. Where do you horn in the individual contract in that answer?

A. The individual contract is a contract which, previously to the recognition of the Union had been in effect in Western Cartridge between the time I become an employe and some days after, I don't know how long, a contract between the company and each individual, known as an individual contract, which gives them an investment feature for a certain assignment of this document, which gave the company certain rights.

Q. Well, didn't the motion attempt to divorce the investment feature from the individual contract and include it within the working agreement, and wasn't that the thing that you opposed?

A. I opposed the investment feature being retained in the working agreement contract, yes, sir.

Mr. Evans: Move to strike the answer as not responsive.

Trial Examiner Ruckel: Well, try it again.

Mr. Evans: I give it up.

Q. (By Mr. Evans) Let's move on to the August 6th, at this meeting Mr. Manning again reported on the conference with the attorney for the company. Do you recall what it was that he reported?

A. No, I do not, I do not recall what he reported.

1944 Q. And then another motion was made concerning the rescinding the motion passed on August 2nd, is that correct?

A. Which motion are you referring to, may I ask?

Q. The motion by Virgil Keefe.

A. Which motion are you referring to as the previous motion?

Q. What motion was referred to? The minutes don't specify. I assume it was the one about the contract.

A. I do not recall.

Q. (By Trial Examiner Ruckel) You kept these minutes, did you?

A. No, sir, I was not secretary at this time.

Q. Was it later that you became secretary?

A. Yes.

Q. (By Mr. Evans) At that meeting, then, you voted in favor of accepting the individual contract, with certain amendments, is that right?

Mr. Ely: You mean the witness voted in favor?

Mr. Evans: That is right, among others.

A. On August 6, 1937, concerning a general contract, I voted in favor of accepting individual contracts with amendments to said contracts, which are legal, to meet the approval of the executive board.

Q. (By Mr. Evans) What does that mean?

A. That meant a contract, which was acceptable, and that was within the meaning of the law.

1945 Q. You mean an individual contract?

A. No, a general contract, not an individual contract, concerning a general contract, and into it to accept the individual contract as a portion thereof.

Q. (By Trial Examiner Ruckel) So you did accept?

A. At this meeting of August 6th, which is a later date to when I opposed it on August 2nd.

Q. Your opposition lasted four days, is that right?

A. That is correct.

Trial Examiner Ruckel: Proceed, Mr. Evans.

Q. (By Mr. Evans) Then at the meeting of August 10th the basic agreement was first submitted to the Union, is that correct?

A. As to the exact date I cannot testify that that was the correct date, I cannot remember the exact date that we submitted contracts to the company.

Q. Well, did you sign the basic agreement, then, on August 12, 1937?

A. I signed the basic agreement, yes. As to the date, unless the original is here I wouldn't care to testify.

Q. Were you present at the meeting referred to in the minutes of August 12, 1937?

A. I was present at that meeting of August 12, 1937.

Q. The minutes refer to a statement, after some discussion, it was moved by Barkley and seconded by you
1946 that the basic agreement as submitted on that day be approved and that the Executive Board execute the agreement. Do you recall what the discussion was?

A. The discussion was mainly of the terms of the agreement in explanation as to just what effect it would have; also how it would operate. There were several questions asked.

Q. What kind of questions were asked?

A. A question of whether or not we were to be considered the exclusive bargaining agents for all employes of Western Cartridge Company.

Q. Who asked that?

A. As I recall, I was the person who asked that question.

Q. And who answered it, what was the answer?

A. So far as Mr. Dawson stated, that our organization had given sufficient proof that we had the majority of the people, had designated that they desired the Western Cartridge Company Independent Union, that our elections had been held, and we had come as representatives of that group of people, and they did accept us under that agreement when duly authorized and signed, as the exclusive bargaining agent for the people of the Western Cartridge Company.

Q. (By Trial Examiner) To what proof did he refer, do you know?

A. I do not believe that he referred to any proof.
1947 However, proof would be under the National Labor
Act, which gives you the right to organize, and when you receive the majority of the people, the law of the country in which we live, I presume.

Q. Just don't make a speech, I am asking you what proof he referred to when he said they had received sufficient proof, if you don't know, say so.

Mr. Ely: Did he say what proof he referred to? Put it that way.

Q. (By Examiner Ruckel) Did he say what proof he referred to, if any?

A. He referred to the membership of the Union, which had been presented to him by the officers of the organization that we held from the election, which we held, a majority of the people favoring the Independent organization, approximately eighty-five per cent.

Q. What election was that?

A. We held an adoption of the constitution under which we organized at the fire house here in East Alton, at which the people designated their willingness to accept this organization and constitution as adopted, as the organization under which they would operate.

Q. The representatives of the company were not present when that vote was taken, were they?

A. No, that was previously, but from that we pre-
1948 sented the membership which we accept, their applications for membership of the people to the company officials.

Q. (By Mr. Evans) There was no ratification by the membership attempted of this basic agreement, was there?

A. No, there was not to my knowledge. It has been a long time ago.

Q. Did you act as spokesman at the meeting of July 2, 1937?

A. July 2, 1937? Will you refresh my memory what it was about?

Q. That is in the book that Mr. Ely has.

Mr. Ely: I was looking at this on the election held that he was just talking about, that part of the minutes of July 9th.

Mr. Evans: I am talking about the meeting of July 2nd.

A. Here it refers to a meeting of July 2nd, but it doesn't seem to be present.

Q. (By Mr. Evans) Maybe it is out of place there?

A. Your question, will you repeat it?

Mr. Evans: Will you read it?

(Question read.)

A. No, I did not act as spokesman. I offered a resolution, however, at that meeting, as a member of the temporary board.

Q. (By Mr. Evans) The resolution was in the nature
1949 of adopting what had been done by the temporary committee in providing for an election to adopt a constitution?

A. It was upon voting upon the question of the adoption of the proposed constitution, that election to be held on July 7, 1937, is the date.

Q. Did you give a talk in favor of your resolution?

A. Did I hear the talk?

Q. Did you give a talk in favor of the resolution?

A. Yes, I did. I stated my opinion and the reasons for why I thought this organization should be formed, and then offered the resolution and moved that it be adopted.

Q. Did you have any experience in organization up to that time?

A. Only politically, none with labor.

Q. You were chairman of the Young Men's Republican Club or something, of the County?

A. Not of the County, not of this County. I was chairman of the Young Men's Republican Club previously, in Pike County. I was chairman at that time of the Young Men's Republican Club in Wood River and vicinity.

Q. Does that include East Alton?

A. Yes, it does.

Q. Were you then running for, or contemplating running for any political office?

A. No, sir, none.

1950 Q. That was the first open meeting or mass meeting of the employes called by this group?

A. Yes, sir.

Mr. Evans: That is all.

Mr. Ely: I have no further questions.

Redirect Examination.

Q. (By Mr. McRoberts) Mr. Wilmering, at this election on voting to adopt the constitution, do your records show how many votes were cast there?

A. I will have to refer to the records.

Mr. Ely: It is in the minutes of July 9th.

A. It is in the minutes of July 9th?

Mr. Ely: Yes, sir.

The Witness: I am not as familiar with it as you fellows:

Mr. Ely: I can turn right to them in half a minute.

The Witness: Wait.

Mr. Ely: Right under the indented paragraph.

The Witness: Yes, sir, there is a reference.

Q. (By Mr. McRoberts) What is the total number of votes actually cast at that meeting?

Mr. Evans: As shown by the minute.

Q. (By Mr. McRoberts) As shown by the minutes.

A. 1,823.

Q. All of your members were eligible to vote at that 1951 meeting, is that correct?

A. All were eligible to vote who were under the law allowed to be members of our organization. That did not include everyone at Western Cartridge Company.

Q. All of your members did not actually vote at that time, did they?

Mr. Evans: Objection.

Q. (By Mr. McRoberts) Did they? Oh, strike it out.

Trial Examiner Ruckel: He may answer.

Mr. McRoberts: I will withdraw it. That is all.

Q. (By Mr. Ely) What was the result, how many voted, according to the minutes?

A. For the proposed constitution there was 1,703 voted for.

Q. How many against?

A. And against was 116.

Q. Any destroyed ballots?

A. The total number of spoiled ballots was four.

Mr. Ely: That is all.

Recross Examination.

Q. (By Mr. Evans) Were you a teller of the election?

A. I was.

Q. How was eligibility for the election determined?

A. Eligibility at the election?

Q. Yes.

A. It was open to any for the adoption of the con-
1952 stitution, it was open to any employe employed at Western Cartridge Company who was not in a supervisory capacity or advisory capacity.

Q. Regardless of whether they had signed with the Union or not?

A. Regardless.

Q. And how was it determined that they were employes of the company? You had a list of the company employes there against which you checked?

A. I don't recall, it has been so long ago.

Q. What would prevent employes from coming in any number of times and voting?

A. We had, as I recall, let me think, we had a list of employes who were in the divisions, as broken down by the constitution; in other words, there was a—

Q. Where did you get the list?

A. That I cannot answer, I do not know.

Q. List of all employes?

A. I would not say it contained all employes. We did have a list we checked against.

Mr. Evans: That is all.

Re-Direct Examination.

Q. (By Mr. McRoberts) Mr. Wilmering, will you look in the minutes there where your hand is now? Is that the list you had, that kind of a list?

1953 A. Yes, we had a list of employes of this type which was at each division desk, being six divisions in which the employe come in and give us their name and where they worked, and we knew by the department that were broken down into the divisions, and by that these applicants that had filed an application, we could check them off. Anyone in doubt we could take their name and check. It was a very easy matter.

Q. (By Trial Examiner Ruckel) You were talking about this mass meeting at which the constitution was adopted?

Mr. McRoberts: No, this was the election.

Trial Examiner Ruckel: The election, then, at which the constitution was adopted, is your testimony that this particular list was present at this meeting?

The Witness: I wouldn't say it was this particular list; it was a list of employes, however.

Mr. Ely: A list similar to that, if that wasn't it. It was one similar to that, is that what you mean?

Q. (By Mr. Evans) Will you endeavor to produce such list which you, as one of the tellers, say you checked?

A. We held so many elections with this one. It has been so many years ago, in 1937.

Mr. Ely: I doubt if Mr. Wilmering has access to any list.

The Witness: No, I have no access to any list.

1954 Mr. Evans: Counsel, will you endeavor to produce such a list?

Mr. Ely: I will if there is any such list in evidence at this time.

Trial Examiner Ruckel: We won't ask you to produce anything that is not in evidence.

Mr. Ely: All right. I think maybe that is what I have been asked to do. I doubt if any list of that sort would be preserved. I don't know why it should be. (Addressing Mr. Chapman) Will you search the office and if there is any, put it in this witness' lap.

Trial Examiner Ruckel: Any further questions.

Q. (By Mr. McRoberts) Were the lists that you had there list of members of the Union?

Mr. Evans: Objection, leading.

Trial Examiner Ruckel: Objection sustained.

Q. (By Mr. McRoberts) Was any employe permitted to vote, whether he joined the Union or not, or were only members of the Union permitted to vote?

A. It was open, to adopting the constitution, any employe of Western Cartridge Company was eligible to membership in a Union, to vote; it was not restricted to Union Members.

Q. (By Trial Examiner Ruckel) Then, any list that you

had wouldn't be similar to this list, because this is only a list of Union members, is that right?

1955 A. This is a list of Union members, as I recall.

Q. (By Mr. Evans) I refer you to the list attached to the minutes of June 6, 1937, marked Respondent's Exhibit 25.

A. Yes. However, anyone who come in and designated that he was an employe of Western Cartridge Company, the record could be kept very easily by taking his name and placing it on the list.

Q. (By Trial Examiner Ruckel) It could be?

A. Yes, it could be.

Trial Examiner Ruckel: Any further questions of this witness?

Mr. Ely: I have none.

Q. (By Trial Examiner Ruckel) What did you receive as secretary and treasurer?

A. What did I receive?

Q. Yes.

A. You mean my compensation?

Q. That is right.

A. I have even forgotten.

Q. One of the witnesses once got a hundred and thirty-five dollars.

Mr. Ely: That was Mr. Sullivan.

A. No; I was only part time secretary during that time.

Q. (By Trial Examiner Ruckel) What did you get,

1956 just about?

A. My monthly salary was forty-two fifty. I would like to check that against the minutes.

Q. We don't care to know exactly.

A. Approximately forty-two fifty a month.

Q. (By Mr. Ely) You continued at your work at the company as well as performing the duties of secretary-treasurer?

A. That is right.

Q. (By Trial Examiner Ruckel) When did you do this work?

A. At night.

Q. (By Mr. Ely) What was the first secretary's name?

A. Sullivan.

Q. He quit his work at the Western Cartridge and devoted his whole time to the Union, is that right?

A. Correct.

Mr. Ely: That is all.

Trial Examiner Ruckel: We will recess until ten minutes to four.

(Ten minutes recess.)

Mr. Ely: Mr. Wilmering, will you come back again, please.

1957 BERKLEY WILMERING,

recalled by and on behalf of the Intervenor, having been previously duly sworn, was further examined and testified as follows:

Further Direct Examination.

Q. (By Mr. Ely) During the recess did you talk to Mr. Manning about the matter of the election on the constitution?

A. I did.

Q. And were you confused on that question when you were on the stand a while ago?

A. I was confused.

Q. What are the facts about who voted and what list you had there?

A. The temporary board had endeavored to obtain approximately twenty-two or twenty-three hundred applications from employes of Western Cartridge, and feeling—

Q. Election for membership into the Independent Union?

A. Election for membership into the Independent Union, and feeling certain, from the approximate number of employes that were employed that we held a safe majority, we decided after the meeting at the school to hold an election to adopt the constitution as was provided by that meeting.

Q. And who did you permit to vote at that election?

A. At that election the list was made up of people
1958 who had joined the Independent Union, and they were the ones that were checked and allowed to vote on the acceptance of this constitution.

Q. And you did not have a list, did not have, as you

stated a while ago you did have, a list of all employes of the Western Cartridge Company?

A. No; that list was asked for and was refused by the company officials.

Q. The list you did have was the list of the members of the Union?

A. A list of the members of the Union, yes.

Mr. Ely: Any further questions?

Mr. Evans: That is all

FRANCIS J. MANNING,

a witness called by and on behalf of the Intervenor, having been duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Ely) State your name, please.

A. Francis J. Manning.

Q. Where do you live, Mr. Manning?

A. Wood River, Illinois.

Q. What is your occupation or profession?

A. Lawyer.

Q. How long have you been practicing law?

1959 A. It will be twenty years this spring.

Q. Did you participate as a lawyer in the formation of Western Cartridge Employees Independent Union?

A. Yes, sir.

Q. By whom were you first employed or approached in that connection?

A. You mean who was the first person?

Q. Yes, sir.

A. It was either Gerald Schauerte or Charles Taylor, one or the other, I am not sure which.

Q. They both approached in connection with it, in any way?

A. Oh, yes, both of them did.

Q. You just don't recall which one was first?

A. No; it is my recollection that Taylor stopped me on the street and said that they wanted to form a Union under this new Wagner Act, and they guessed they would need a lawyer, and he knew me and was pulling for me.

I think I saw him first. Then Schauerte called me up to get an appointment for the Committee to come down. That is the best of my recollection.

Q. (By Trial Examiner Ruckel) You saw him first or he saw you first?

A. That was over the phone.

Q. (By Mr. Ely) And no television?

A. No.

1960 Q. Incidentally, do you know where Mr. Schauerte is now?

A. I don't know. I understand he is in California. I don't really know that, but I know his folks, and that is my understanding.

Q. Well, then, what generally did you do then in connection with the formation of this Union, if anything?

A. Well, do you want me to go into detail?

Q. Just tell us generally and then more or less—

A. When the committee come up, of course, they told me what they wanted to do.

Q. Do you recall who that committee was?

A. I remember some of them. There were two of the Ladd boys, Berkley Wilmering, Howard Tueth, Sullivan—

Q. Otis Sullivan?

A. Otis Sullivan, yes, sir; old Mr. Wilkerson, I can't think of his name or initials, and Earl Hooper. That is all I can recall just now.

Q. All right. Then what transpired between you and that group of men?

A. Well, at the first meeting they more or less just said they wanted a lawyer, the first meeting was just that they employed me, told me what they wanted, and then we started to work on it.

Q. And then did you draw up some documents, one kind or another?

1961 A. Oh, yes, Mr. Sullivan made notes or minutes, but I drafted the minutes, I drafted practically all the papers, I drafted practically all the papers, and then they practically used my office as headquarters there for, I would say, two months or two months and a half, maybe, until they got their own office. What the men would do, they

would get their cards, and when they would get their cards signed up they would bring them, and I employed either two or three extra stenographers, and then we made up a list as they would bring the cards in.

Q. What cards do you refer to?

A. The membership or application card.

Q. For a membership in the Union?

A. That is right, yes, sir.

Q. And you advised and consulted with them?

A. Oh, yes. We had meetings, I would say the first month or month and a half or two months we had meetings practically every night in the week excepting Saturday and Sunday.

Q. Now, were you ever employed by the Western Cartridge Company?

A. Never have, no, sir.

Q. In this or any other connection?

A. No, sir, no connection. By the Western Cartridge, the company itself?

1962 Q. Yes.

A. Never have, no, sir.

Q. Were you ever paid any fee by the Western Cartridge Company?

A. No, sir.

Q. For any work you did in connection with the formation or organization of this Union or for the Union?

A. No, sir, I was paid by the Union, out of their dues.

Q. Then do you know who did represent the Western Cartridge Company at that time as attorney?

A. Senator Williams.

Q. Senator George H. Williams of St. Louis?

A. That is right, yes, sir.

Q. Did you have meetings with him?

A. I had one conference with him at his offices, as I recollect, and several times when our representatives or our executive committee would meet with the company, as I recall, the Senator was present on one, perhaps two occasions.

Q. It was rather difficult, I guess, to remember just what happened there, but you would present the views of the Union and Mr. Williams would present the views of the company, is that right?

A. As I recall, after all the elections were over and it apparently seemed that we had the majority of the
1963 votes of the employes, I drafted a communication to Mr. Olin, as president of the company, which, I believe, as far as I know, the Secretary delivered to Mr. Olin or somebody in the company, I can't say.

Q. Was that Mr. Sullivan delivered it to him?

A. Yes.

Mr. Evans: Just a minute, I want to strike the conclusion of the witness as to the statement that they apparently had a majority.

Trial Examiner Ruckel: It may be stricken.

Q. (By Mr. Ely) Why do you say they apparently had a majority?

A. Well, they had, the boys said there was around three thousand, as I recall, or thirty-three hundred employes, and they had, as I recall, twenty-six or twenty-eight hundred, I may be wrong on those figures, but it was between eighty and ninety per cent of the amount of employes, so then we sent this communication, as I say, and some time later, as I recall, Senator Williams called about a conference which we had.

Q. Called you?

A. Called me, yes, and either at my office or his office. I just happened to be working on another case with a St. Louis lawyer, and I was going to be down in St. Louis on a certain day, so I told him that subject to the ap-
1964 proval of our committee I would probably go down on that day, so we had a meeting that night, and as I remember, there was one of the other members was appointed to go down with me, but he didn't go, and the members, of course, wanted to know what he wanted, I said, well, I didn't know until we went down. It was a conference, frankly, I think he as the attorney, wanted to see who was representing the Union, and I as attorney for the Union, wanted to see who was representing the company, and their instructions were—here was my purpose, what I had in mind in writing this letter, this communication, at that time the Wagner Act was new, and I didn't know a great deal about it and frankly, I couldn't find out anyone else that did, but I wanted to get some-

thing, something in writing, that the company would recognize this Union as the bargaining agent, that is, I wanted to get something in writing, and these men all wanted to be very definite in wanting to retain their contract or bonus contract, whatever you call them.

Q. By these men, you mean—

A. The representatives, the executive committee or executive board, as a matter of fact, I even so far as more or less advised them that they wouldn't—might not do just as well to let the company know they were too anxious, if we wanted to get a raise they might hold that over us and decide we didn't want to do anything to get rid of
1965 those contracts and we might all get run out of town, so I went down, made the appointment with the Senator, and the main purpose was to get something for the company in writing recognizing us as the bargaining agent, and also we discussed some of the demands. Of course, all the demands weren't there, the only ones I knew of was that they wanted to retain these contracts. That was my job, and that was the two things that I had in mind in getting up this agreement.

Q. Now, how long have you continued as attorney for the Independent Union?

A. Well, after they got organized and got the demands, I would say it was possibly two and a half months, something like that, possibly three. They might occasionally call up and ask questions here and there, but that is when I was substantially finished. In other words, my job was to get them organized, try to, if we could, get them recognized as the bargaining agent, and, of course, as far as the demands, that was more or less their problem rather than a legal problem.

Q. Did any official of the Western Cartridge Company, the company itself, ever express any views to you on whether they wanted or did not want any such Union or anything of the kind?

A. No. The only discussion I had with the company
1966 was at the meetings with the Executive Committee.

Mr. Ely: I think that is all.

Further Direct Examination.

Q. (By Mr. McRoberts) Mr. Manning, have you ever been connected with the Western Cartridge Company directly or indirectly in any way?

A. I have not, no, sir.

Q. You made reference here a moment ago to these men saying that if you did something about these individual contracts or lost or knocked out the individual contracts, they would all get run out of town?

A. That is right.

Q. By whom?

A. By the employes.

Q. They were referring to the employes?

A. Most all my information come, naturally, from these representatives, as they would come up into the office and express the views of their employes when they talked to them to endeavor to get them as members of their Union.

Q. What did they say were the views of the employes with reference to getting these individual contracts?

A. Oh, they wanted them. As I say, they more or less wanted them too badly, I thought, more or less against my advice; it was all right if they wanted them, but I wanted them to kind of keep quiet about it; in other words, it might hurt them when they tried to get a raise.

1967

Q. Mr. Manning, did you, as the attorney for the company, draft the minutes which are contained in Respondents' Exhibit 25?

A. Yes, sir, up until the time that I withdrew, which would be about the time they moved to their new office across the street from this hall, that is, in this way, Mr. McRoberts, Mr. Sullivan, the secretary, took the note. Of course, I was present at the meeting, and he gave me the notes, and then I drafted them in this form.

Q. I see. I will show you Respondent's Exhibit 26, and ask you if you drafted the original of that letter?

A. Yes, sir, I did.

Q. And also Board's Exhibit 9?

A. Yes, sir, I did.

Q. I will show you photostatic copy of the basic agreement of August 12, 1937, and ask you who prepared the original draft, the first draft of the basic agreement? Did

you prepare it or Senator Williams prepare it, or do you recall?

A. As I stated, at this first conference, I was down in Senator Williams' office, and we both more or less had our ideas, and whether he prepared a memorandum at that time or not, we were in his office, usually that is the way lawyers do, whoever's office it is in, they call their
1968 stenographer and dictate it, and then I brought it back, but in the form that it was eventually, I drafted it later. That is, in other words, it was more or less, both of us.

Q. This final exhibit was the result of several changes and drafts and redrafts, which were worked up between you and Senator Williams?

A. That is right; I understood you to say the first memorandum.

Q. The exact sequence of it I don't care particularly about, Mr. Manning; your fee was ultimately paid by the Union?

A. That is right.

Q. Not by the company?

A. That is right.

Q. And since that time have you had any connection with the company?

A. No, sir.

Mr. McRoberts: I think that is all—oh, one question.

Q. Mr. Manning, there has been reference to a printed constitution in the testimony here. What is your recollection about the original drafting of that constitution or the changing of it?

A. Well, this Charley Taylor that I spoke of, came up to my office one afternoon, he evidently knew of the appointment that they were getting up, I was busy, and left
1969 a bundle or package up there and said they would be up later to see about it, and when the committee came up, it was a copy of the constitution of the Standard Oil Company Employes Independent Union. That is the original which it later turned out he had no authority to do that, but he did and, of course, some changes were made, considerable changes were made, and to save expense, after those changes were made, we had a little

pamphlet to insert in place of the pages, and those were then printed. Does that answer your question?

Q. Yes.

A. But there was considerable, or quite a few, changes made from that original constitution.

Q. The original draft was printed before you had a chance to approve it or criticize it?

A. Oh, yes; that is the first time I had ever seen it. It was printed, as I understand, by the Ghio Printing Company in Wood River there.

Q. Mr. Manning, you spoke of making certain lists of members from the application cards.

A. That is right.

Q. Calling your attention to the minutes of June 13, 1937, as they appear in Respondent's Exhibit 25, and the minutes of some subsequent meetings, are those the kind and type of lists to which you refer?

1970 A. That is right. As the men would come in each night they would bring cards, and then the girls in the morning would take those cards, list the name and address, and it says memo number; as I recall that was their clock number or their payroll number, but, anyhow, they took this information from the cards and prepared these lists.

Q. You employed a number of extra stenographers to do that work?

A. Two or three, I think. It is there in the minutes.

Q. And there are references in the minutes to payment for typing and work of that sort, which represents payment to you for these extra stenographers hired by you?

A. As I remember, the girls were paid directly. I don't think they paid me and I paid them. I think the Union paid the girls directly, the best of my recollection.

Q. But the work was done in your office?

A. Oh, yes, it was.

Q. Did you advise the Union members as to where they could hold their meetings?

A. Yes, sir, I did.

Q. What advice did you give them?

A. Told them any place, just so it had no connection with the company. I recall at the time they were going to have the election, there was a little shanty or shed, I

don't think it is there now, I think it is used as a
1971 parking lot, but they thought they might get that,
and I advised them against it. I said, "No, don't
rent that." And then we used this hall right here, that is
the Fire Department, I think that is where the election
was held. The school house they held one meeting, I
recall.

Mr. McRoberts: I think that is all.

Cross Examination.

Q. (By Mr. Evans) You had known Taylor and Schauerte before this occurred?

A. I knew Taylor very well. I didn't know this particular Schauerte so very well, I knew his brother and his father very well, though.

Q. And when was it you first had a conversation with Taylor about the formation of a Union?

A. Well, I can't remember the exact date. You mean approximately, Mr. Evans?

Q. Yes.

A. Oh, I would say it was within a week before the Committee came up to the office. I don't recall just exactly.

Q. You said you had a telephone conversation with him at the time?

A. As I recall, Mr. Taylor, I saw him on the street, or over at the garage, he had the same kind of car that I did, and he was the first one that told me that they were going
to organize a Union of the employes and they would
1972 need a lawyer, and he was pulling for me, and I
thanked, and then, as I say, he brought these up, and then Gerald Schauerte called up and told me the same thing, wanted to know if the Committee of their men could make an appointment with me sometime after work. Of course, I said yes, and then they did. The date is whatever is the date of the first meeting.

Q. Did Taylor state what kind of an organization they were forming?

A. He said a Union, an independent Union, as I recall.

Q. Did you question him particularly about it?

A. Not Taylor particularly, Mr. Evans. As I say, Taylor was telling me there was a case coming up and he was working for me to be the lawyer for the men when it come

up, and I know we met for an hour or an hour and a half and I discussed the entire proposition with him.

Q. You say you drew up the minutes of the various meetings that were held?

A. In this form. As I say, the custom was, Sullivan was the secretary, and he would make the notes of the minutes and then he would leave them with me, and then I would draw them up as they are here from the note.

Q. And they would sign those afterward?

A. At the next meeting, if they were approved. They would be read, and then they were either approved or rejected.

1973 Mr. McRoberts: Mr. Evans, I might state the document you are reading is a letter from Mr. Olin to Senator Williams, which has not been introduced into evidence as yet. I expect to do so.

Mr. Evans: It refers to certain things which I might want to ask him about.

Mr. McRoberts: So far it is personal correspondence. You have my permission, however, to use it.

Mr. Evans: I am sorry. I just assumed, since it was stapled onto here, that it was part of the document in some way.

Trial Examiner Ruckel: The letter has been introduced, has it not?

Mr. McRoberts: Pardon?

Mr. Evans: It has been identified. I don't know whether it has been introduced.

Mr. McRoberts: The only thing that has been identified, Mr. Examiner, is the attachment to it. This witness, of course, knows nothing about the letter itself, which is a letter from Mr. Olin, to his attorney. My only point is this, I expected to have that properly identified and offered in evidence in due course. I don't know why we hold up this proceeding.

Mr. Evans: Because there are certain matters referred to in the memorandum which go directly to his testimony.

1974 Mr. McRoberts: You will be permitted to examine it.

Q. (By Mr. Evans) Now, you state that you prepared the letter of June 25, 1937?

A. Yes, sir.

Q. Was that after action by the organizing committee or was that merely the action of you, Tueth and Sullivan?

A. Well, I would say it was the action of the committee by my advice; in other words, we wanted to let the company know that we had a majority of the employes and wanted to be designated as the bargaining agent.

Q. At what meeting was such action taken?

A. Well, I suppose, June 25th, I suppose, right around that time.

Q. Can you refer to the minutes of the Union, and point out such action?

A. I don't know. (Witness studies same.) No, it is not in the minutes prior to that time. I have looked prior to that date, June 25th.

Q. Now, look at July 22nd, and see if such authorization was not given?

A. July 22nd?

Q. Yes. I am sorry, that would be in the next book.

Mr. Ely: The first one in that book.

Mr. Evans: Yes.

A. Well, this that you referred to, Mr. Evans, that
1975 is this working or basic agreement where there was to be something, as far as the company, that was the culmination of it, I would say, to meet with the company to have something in writing, some written recognition that we were the bargaining agent.

Q. I show you Board's Exhibit 8 for identification, and ask you to state whether or not you prepared that letter?

A. Yes, this was after the permanent—that is, this was the permanent board, the other was the temporary board, this was the permanent board, when the elections had been held, and we were asking specifically then. We were just saying we thought. Now we felt we were in a position to prove it, because the elections had been held and all the elections had been conducted, and it was a permanent organization.

Q. What had happened between June 25th and July 23rd, 1937, as to your status as the bargaining agent?

A. Well, I don't recall. Whatever the date of that instrument is, is the date that they were, otherwise it was just in the process of negotiations.

Q. Did you participate in any of the other negotiations between those two dates?

A. Well, I probably did, had several meetings with the company and the executive board at the company, yes.

Q. Before the letter of July 23rd, 1937?

A. May I refer to the minutes?

1976 Q. Surely.

A. I don't remember. My recollection from here, the best I recollect, Mr. Evans, is that we wrote this first letter in order to let the company know there was such a Union in existence, showing we were the bargaining agent. Then as to any definite provisions, as I recall, the temporary committee, the constitution had been adopted, representatives had been elected, and they more or less wanted rather, to let the permanent organization, which had been elected by the men, do the negotiating, that is the best of my recollection. You see what I mean. The first one we were letting them know, saying here, we are the bargaining agent and then after the election they had a permanent organization, and we were ready to go ahead, if they were recognized, they were going to make their demands.

Q. Did you receive any response to the letter of June 25, 1937, Respondent's Exhibit 26?

A. I did not, no.

Q. Your office was more or less the office of the Union?

A. That is right, it was.

Q. Do you know whether or not any communication in response to that letter was received?

A. To the best of my recollection, none other than when the Senator called about the conference.

Q. That was after the letter of July 23, 1937, Board's

1977 Exhibit 8, for identification?

A. I don't remember whether it was after the first one or the second one; it seems to me it was after the first one—no—I guess I am wrong, because my recollection is this, the conference was after the permanent organization was elected that I had the conference with the Senator, that is the best of my recollection; that is four years ago. I may be wrong, Mr. Evans.

Q. Didn't some representative of the company tell you that because of the temporary nature of the organization as reflected in the letter of June 27, 1937, that it would not at that time deal with such an organization?

A. They never told me, no. They may have told one of the men, and that was brought up at the meeting. If you mean, did they tell me directly, no.

Q. Did any of the men tell you that the officials of the company stated that?

A. I don't remember.

Q. Did Sullivan report to you after the letter of June 25, 1937?

A. He said he gave it to one of the Mr. Olins, I have forgotten which one it was. My recollection is it was addressed to Mr. B. W., president, and he wasn't there, and he gave it to one of the other Mr. Olins.

Q. What did he say as to what Mr. Olin said?

1978 A. Well, I don't remember that he said anything. If he did I don't remember what it was.

Q. Did he say whether or not Mr. Olin questioned him as to how this proposed organization would affect the individual contract?

A. I don't recall that, Mr. Evans. To the best of my knowledge, I would say no, but I don't recall any conversation like that with Sullivan; in other words, Sullivan, I asked him, "What did you do with that communication?" He said, "I gave it to the Olins," is all that I remember that we discussed, as far as that is concerned.

Q. And you did nothing more about it until after the meeting of July 22, 1937?

A. That was after the permanent organization were elected, and so on, yes, sir.

Q. Did you then draw up Board's Exhibit 9?

A. That is right, after the contract recognizing the independent Union as the bargaining agent, then we drew up this working agreement or demand.

Q. Was that after the basic agreement had been signed?

A. Oh, yes, we wanted something to show, first, that we were being recognized as the bargaining agent.

Q. Referring to your minutes, Board Exhibit 9 is dated July 26, 1937, is that correct?

A. That is right.

1979 Q. And it was signed and sent to the company on or about that date?

A. That is right. My recollection is the secretary delivered it the same day to the company.

Q. Does it not show that the basic agreement to which you just referred was passed by the Executive Board at a joint meeting on August 12, 1937?

A. That is right, it does.

Q. So that actually, the demands contained in Board's Exhibit 9 were drawn up before the basic agreement?

A. If that is the case, that is right.

Trial Examiner Ruckel: Before the basic agreement was ratified?

Mr. Evans: Was executed. It never was ratified.

Trial Examiner Ruckel: Was executed.

Q. (By Mr. Evans) Well, now, the minutes show that on or before July 29th, 1937, a conference was held with representatives of the company. Were you present at such a meeting or was your meeting with Mr. Williams?

A. That is the one I spoke of with Mr. Williams, yes. That is the one Keefe, I was thinking it was Keefe, that Keefe and I went on.

Q. That followed the meeting at which you and Keefe went to meet with the attorney with the company?

A. I don't just understand what you mean, fol-
1980 lowed which meeting?

Q. Followed this meeting covered by the minutes of July 29th.

A. You mean the July 26th meeting minutes? I don't know as I understand your question, Mr. Evans. This meeting that you are speaking of here was the time we went down, or I went down, Keefe didn't go down, I went down and had the conference that I spoke of here in my testimony with Senator Williams.

Q. I see. And that meeting had already been held before the meeting of, the executive board meeting of July 29th, is that correct?

A. No, no, it was after, it was after this date here, it was after the meeting that I was authorized to go down.

Q. Going back to my original question, were you present at a meeting at the company's plant, held between representatives of the Independent and the company?

A. Yes, I was at two, possibly three meetings then.

Q. Before that date, before July 29th?

A. I don't remember. I think we had in the minutes,—whenever we had a meeting with the company; you are

more familiar with the minutes than I am. Is that right? You had it, you have seen them more recently than I have, but my recollection is whenever we met with the company, it is in the minutes.

1981 Q. In your discussion with Mr. Williams the first time, did you present to him and discuss with him the points included within Board's Exhibit 9?

A. No, sir. In a general way, he more or less, was trying to find out what we were going to ask, but I was more or less interested in being recognized in writing first as the bargaining agent before we went ahead and made a working agreement.

Q. Let's see, if you can remember what was said at your first meeting with Senator Williams?

A. Except substantially as to what we did, I don't particularly remember anything as to what we said. My job I had in mind was to get something in writing from the company recognizing this Union as bargaining agent, and my other job, as I understood it from these men, was to try, if possibly, to retain these contracts that I have spoken of, that is what I had in mind; just what he said and I said, that has been four years ago, I can't remember, but that is substantially it, I can remember that, because that was my job, that is what I was trying to get.

Q. You reported this meeting back to the executive board on August 2nd, is that correct?

A. Is that the date? Yes, sir.

Q. And then the representatives passed a motion that a new contract be drawn on the working agreement,

1982 but that the investment feature be retained. Could you elaborate on that?

A. By the working agreement, this is my recollection what we meant by the working agreement.

Q. Pointing to Board's Exhibit 9?

A. Yes, sir, that is what I had in mind by referring to the working agreement. The basic agreement, what I had in mind there, the main purpose of that was to get some written recognition as the bargaining agent. This other part of the demands more or less came later, as I recall.

Q. Did you ever submit anything in writing to Mr. Williams other than what is contained in Board's Exhibit 9?

A. No, I did not. Well, let me see. You mean that I didn't submit this to Mr. Williams? What is Exhibit 9?

Q. What you have in your hand?

A. I never submitted that to Mr. Williams. My recollection is the secretary filed that with someone connected with the company. The only thing I submitted to Senator Williams was that basic agreement, I don't know the exhibit number, but that is the only thing that I ever exhibited to him or presented or submitted to him.

Q. Were you present on the meeting of August 12, 1937, when the basic agreement was executed, approved and executed?

A. To the best of my recollection I was, yes, I was.

Q. Now, in the constitution there appears a clause
1983 on ratification of agreements?

A. That is right.

Q. Board's Exhibit 6, now, I am referring you to; and then in the amendment that was changed as to certain provisions, is that correct?

A. Yes, sir, that is right.

Q. Now, was the amendment on the change and ratification of agreements made before or after the execution of the basic agreement?

A. Mr. Evans, as far as the working agreement, I got out of it before then.

Trial Examiner Ruckel: Basic agreement.

A. It was not before the basic agreement, no.

Q. (By Mr. Evans) The amendment was adopted after the basic agreement?

A. You mean the amendment to the constitution?

Q. Yes.

A. Yes, it was amended before, as I recall. As I say, I would have to refer to the minutes, whatever date it says, it was amended.

Q. I wish you would.

A. I think that was in the early part. You might help me to be a little quicker there.

Q. I have looked for it.

A. Isn't it in there? It should be, because it was
1984 in the minutes at the time this was amended. One of these was pasted in the minutes. If you say it isn't here, it isn't here, but it should be.

Q. Maybe you can find some reference about it.

A. As I remember, there was discussion about this. I think there was a meeting held at the school house here in East Alton.

Q. (By Trial Examiner Ruckel) Discussion about what?

A. About this constitution and about these amendments.

Q. Board's Exhibit 6 and Board's Exhibit 7?

A. That is right. And then after that it was voted on, to the best of my knowledge. Well, now, wait, here is the constitution, isn't these amendments included in here?

Q. (By Mr. Evans) Well, I don't know.

A. Yes, here they are. This is the date of the meeting then, for these amendments to the constitution, on June 10th. That is when it was considered as the proposed constitution to be submitted for their approval, and this constitution here includes these amendments. That is the constitution as drawn here with this, and whatever exhibit this is.

Trial Examiner Ruckel: Board's Exhibits 6 and 7.

A. 6 and 7.

Q. (By Mr. Evans) And then following that, then you had the amendment drawn to comply with that?

1985 A. That is right. We set out the entire constitution in the amended form in these minutes. I knew they were in there.

Q. What was the reason for the change of the ratification of agreement, section A, from that in the previous document?

A. Because the committee wanted it, Mr. Evans, is the best reason I can give you. Why they wanted it, I don't know.

Q. Any other reason?

A. Not that I know of.

Q. What discussion was there on that point?

A. There was quite a bit of discussion as to the amendment to the constitution. They went down section by section.

Q. On that point what was the discussion?

A. I don't recall the exact discussion of any of them. This is the one you are referring to where it is by the majority of the members instead of all of the members, isn't that right?

Q. It also changes the application of the ratification provision from all agreements of general importance to—

A. To make it majority instead of unanimous vote, isn't it?

Q. Also changes the matter of ratification of agreements of general importance to those defined as agree-
1986 ments pertaining to wages and hours?

A. My recollection is, instead of having a unanimous vote, if a question of that kind come up, a majority was what they figured the most of them wanted, and it was pretty hard to get unanimous vote, I would imagine.

Q. What was the purpose of the other change?

A. If I read it I could remember it.

Q. All right.

(Witness reads same.)

A. It would be pretty hard, I believe, to get whatever they had, twenty-six or twenty-eight hundred men together, to have to have a unanimous vote.

Q. Will you compare the two?

A. You asked me something about these and the Examiner had them. What was your question? You asked me something about why was something changed.

Q. The ratification of agreements on the original document, Board's Exhibit 6, contains "the ratification of agreements of general importance negotiated shall be referred to the membership," whereas, in the amendment it defines agreements of general importance as agreements pertaining to wages or hours. My question is, what was the discussion on the change?

A. Well, I don't recall. Let me understand you correctly.

Are you under the impression that this Exhibit 6
1987 was ever adopted by the Independent Union?

A. Well, it was printed and used, yes, started from this and—

Q. Distributed to employes?

A. That is right, and then the committee made these changes.

Q. (By Mr. McRoberts) By these you are referring to—

A. The changes shown in Exhibit 8, and that is the constitution that was voted upon.

Q. (By Mr. Evans) I am asking you what the discussion was on that change?

A. I don't remember, except as I told you, that it was easier to get—you mean wages and hours? I don't remember, Mr. Evans.

Mr. Evans: That is all.

Trial Examiner Ruckel: Any further questions?

Mr. McRoberts: No further questions.

Trial Examiner Ruckel: I have possibly two.

Q. (By Trial Examiner Ruckel) You say that a strong reaction of this group which approached you was that nothing should be done in the way of getting a contract or negotiating with the company which will imperil their individual bonus contracts?

A. That is right, Mr. Examiner, yes, sir.

Q. What was the purpose of that fear, had they
1988 been threatened in any respect that you know of?

A. I don't know, when they came to me. In other words, when they come to a lawyer they say, "This is your job, we want these contracts."

Q. Did they indicate that their individual contracts were in anywise imperiled?

A. I never heard them say that.

Trial Examiner Ruckel: That's all. Any further questions.

Mr. McRoberts: No further questions.

Mr. Evans: That is all.

* * * * * * *

1992 GEORGE H. WILLIAMS,

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. McRoberts) Will you state your name, please?

A. George H. Williams.

Q. You live in St. Louis County?

A. I do.

Q. You are a lawyer?

A. I am.

Q. Senior member of the firm of Bryan, Williams, Cave & McPheeters, attorneys for the respondent in this case?

A. Yes, sir.

Q. Senator, in 1937, you represented the Western Cartridge Company in some matters?

A. I did.

Mr. McRoberts: Will you mark this as our next exhibit?

(Thereupon said document was marked Respondent's Exhibit 27, for identification.)

Q. (By Mr. McRoberts) Senator, I will show you a
1993 letter which has been identified as Respondent's Exhibit 27, to which there is attached a copy of the letter which has already been identified as Respondent's Exhibit 26, and ask you if you received those exhibits through the mail on or about June 27, 1937?

A. I did.

Q. And Respondent's Exhibit 27, is signed by Mr. J. F. Olin?

A. Yes, sir.

Q. You recognize the signature?

A. I do.

Q. And attached to that letter when received was the copy, Exhibit 26?

A. Yes.

Q. Senator, I will ask you whether before receipt of this letter of June 26, 1937, Respondent's Exhibit 27, you had any knowledge or information with respect to the Western Cartridge Employes Independent Union?

A. I had none.

Q. Had you had any connection with the organization or formation of that union?

A. I did not.

Q. Following the receipt of this letter, approximately a month later, did you thereafter have exhibited to you a copy of Board's Exhibit 9, dated July 26, 1937?

1994 A. I did.

Q. Do you recall from whom you first received a copy of this Board's Exhibit 9?

A. My best recollection is I received it from the company.

Q. And thereafter did you have any communication with Mr. Francis J. Manning, attorney for the independent union?

A. I did.

Q. What was that communication you had with him?

A. I called him up over the telephone.

Q. What was your conversation, in substance?

A. I asked him whether he expected to be in St. Louis in the near future. I didn't know Mr. Manning. He said he did, and I told him I would be pleased to have him call on me when he came, because I wanted to discuss with him the complaints or the demands raised by the union. I asked him whether he represented this new union. He said he did. He did call on me in response to that.

Q. Now, you say you didn't know Mr. Manning before that time?

A. No, I had never met him.

Q. Had you ever had any business dealings with him of any kind before that time?

A. None whatever.

Q. Or other dealings?

A. None.

1995 Q. Did Mr. Manning come to your office?

A. He did.

Q. Shortly after that conversation?

A. Yes.

Q. And, briefly, what took place?

A. We discussed the demands made by the union on the Western Cartridge Company.

Q. By demands you are referring to those contained in Board's Exhibit 9?

A. Set forth in that Exhibit 9. The conference lasted, I should say for two or three hours. The discussion first, as I recall it, was as to the definiteness or indefiniteness of the specific demands. My questions were whether these demands were actual pressing demands, or whether they were demands that had been put together in this paper as a basis for general discussion and settlement at the same time. It seemed to me, I told him, that if there were any specific demands, that that specific demand should be entertained and disposed of, but that if this were a general recital of grievances, that I thought they would better be disposed of one by one. Either he took up with me, or I with him, and I wouldn't say which now, the question of the effects of the contracts of individual employment then existing between the company and a great number of its

employes, and what the effects of the organization of
1996 the union and of the Wagner Act, itself, might be on those contracts. I had been giving some thought to that subject prior to my conference with Mr. Manning.

Q. Following this letter of—

A. Following the letter I had received from Mr. Olin, which I have identified, dated, I believe, June 26th.

Q. That is right.

A. And I suggested to him that insofar as it was possible to do so I thought the better proceeding would be for us to agree, so far as we could, on the status of those individual contracts and then agree as to how grievances might be initiated and disposed of. I don't know now whether I had prepared a form for a working agreement or a basic agreement at that time, or not, or whether he and I discussed that day and prepared such an agreement in a tentative form, but my recollection now is that when he left my office he left with a form which I had prepared or which he and I together had prepared, because I recall that he returned it to me later. We had telephone talks later about this agreement and he finally sent it to me in the form which he and I had agreed upon.

Mr. McRoberts: Now, will you mark this?

(Thereupon said document was marked as Respondent's Exhibit 28, for identification.)

Q. (By Mr. McRoberts) Senator, I will show you
1997 Respondent's Exhibit 28, and ask you if that is the letter of transmittal by which Mr. Manning sent you the basic agreement in final form?

A. It is.

Q. Do you recall whether that was sent through the mail, or whether that was delivered to you at the meeting of August 12th, or just how you received that?

A. I couldn't say now, but I should say it came through the mail. May I say that in the proposed working agreement—

Q. Board's Exhibit 9?

A. Yes. A reference was made to the individual contracts and they, of course, were in our minds because I had worked on those contracts previous to that in that year and in previous years.

Q. Stopping right there, Senator Williams, the original contract used by the Western Cartridge Company had been prepared many years ago, had it not?

A. Oh, yes.

Q. I believe that is the draft prepared by Mr. Lehman, former Solicitor General of the United States, was it not?

A. I never discussed it with Mr. Lehman, but I was told that.

Q. And later on you participated in various revisions from time to time?

A. That is correct.

1998 Q. Just to refresh your recollection from a file there, was it in March of 1937 when one of these revisions took place?

A. Yes.

Q. Now, Senator, following this initial conference with Mr. Manning and your intervening telephone conversations, did you finally attend a meeting at the dining room of the Western Cartridge Company on August 12, 1937?

A. Yes, I attended that meeting.

Q. And that was the meeting at which there were present representatives of the company and the representatives of the union, and in addition some thirty or forty advisory men of the union?

A. I don't recall that, Mr. McRoberts. My recollection is that the meeting I attended there was Mr. F. W. Olin, Mr. John M. Olin and Spencer Olin, representing the company, and Mr. Manning, and I think there were six representatives of the union there, and we sat at either end of a table there in the dining room. I don't recall now that there was anybody else present.

Q. I think that is an earlier date.

A. My memory is not clear about attending a meeting when there was any great number present, a greater number than that.

1999 Q. Senator, could the date of the meeting to which you refer have been July 27, 1937, at which there is some testimony there was a meeting of the union, the officials of the company, Senator Williams, and Mr. Manning, discussing the basic agreement?

A. It could have well been.

Q. Then on the later date of August 12, 1937, it doesn't

show whether you were here or not. You have no recollection of being present at a large meeting at which the signing of the basic agreement was approved by the members of the executive board and the advisory committee?

A. No, I haven't.

Q. I will show you copy of this basic agreement which has been introduced in evidence, Senator, and call your attention to a change made there in pen and ink on the side. Did you make that change, was that made in your handwriting?

A. No, that is not in my handwriting.

Q. Do you recall the question in that connection?

A. Yes. My recollection is that the basic agreement as originally prepared had a period in the third line after the word, "Thereto", and that I telephoned up to the company suggesting that—or, it had a comma, and I suggested that this change be made so as to end with a period, beginning a new sentence with, "However". I know that I telephoned about that change, but it is not in my handwriting.

Mr. McRoberts: I offer in evidence Respondent's
2000 Exhibits 26, 27 and 28, Mr. Examiner.

Mr. Evans: I have no objection to 26 and 27. I don't believe that 28 has any probative value unless the documents referred to are produced. The letter is merely a transmittal letter and would have no probative value unless the documents were here.

Trial Examiner Ruckel: The transmittal of the basic agreement back?

Mr. Evans: We don't know whether that is the one that was final, or whether that was a different one.

Q. (By Mr. McRoberts) Senator Williams, I will ask you whether or not the basic agreement in its form of August 12, 1937, referred to by Mr. Manning, is a copy of the basic agreement in its form as signed, except for that change of a period to a comma, or a comma to a period, about which you have just testified?

A. It is the same.

Mr. Evans: What about the memorandum referred to in the transmittal letter?

Q. (By Mr. McRoberts) Is the memorandum a prior draft before the correction had been made in the basic agreement, Senator?

A. It was the basic agreement that was under discussion between him and me, and it is the basic agreement that he referred to as the original memorandum.

2001 Trial Examiner Ruckel: It may be admitted. It fixes the time of the event.

(Thereupon said documents, marked for identification as Respondent's Exhibits 26, 27 and 28, were received in evidence.)

Mr. McRoberts: Mark this as the next exhibit.

(Thereupon said document was so marked as Respondent's Exhibit No. 29, for identification.)

Q. (By Mr. McRoberts) Senator, I will show you Respondent's Exhibit 29, and ask you if that appears to be the memorandum referred to by Mr. Manning in his letter of August 12th?

A. It is. The place for the signatures at the foot of that memorandum is in my handwriting.

Q. I will show you Respondent's Exhibit 30.

(Thereupon said document was so marked as Respondent's Exhibit No. 30, for identification.)

Q. And ask you if that is your office copy of the same memorandum with the changes made in your handwriting which were agreed upon over the telephone with Mr. Manning?

A. Yes, this is the final draft agreed to after telephone talks with Mr. Manning and with Mr. J. M. Olin.

Mr. McRoberts: I offer in evidence Respondent's Exhibits 29 and 30.

Q. (By Trial Examiner Ruckel) Respondent's Exhibit 30, was the basic agreement, in final form, at the time of signing, you say, Senator?

2002 A. I would have to refer to the numbers. May I see it?

Q. (By Mr. Evans) This is the memorandum that was prepared in your office?

A. Yes.

Mr. Evans: No objection.

Trial Examiner Ruckel: They may be admitted.

(Thereupon said documents marked for identification as Respondent's Exhibits 29 and 30, were received in evidence.)

Q. (By Mr. McRoberts) Senator, following the execu-

tion of this basic agreement did you participate further in the negotiations between the company and the independent union?

A. No, I did not.

Q. I think that's all.

Cross Examination.

Q. (By Mr. Evans) Just a moment until I compare the documents. Senator, was your first contacts with the independent union with Mr. Manning, or had there been a meeting at which representatives of the independent were present prior to that time?

A. My first contact was with Mr. Manning.

Q. That was at your office following a telephone conversation?

A. That is right.

Q. And you had already received from the company a copy of Board's Exhibit 9?

2003 A. Let me see that letter from Mr. Olin. I am not quite clear about that.

Q. At any rate, you did discuss certain of those points at your first meeting with Mr. Manning?

A. Oh, yes.

Q. Which ones did you discuss?

A. Shall we take them seriatim as they appear in the proposed working agreement? I think that might refresh my memory.

Q. If that is the way you remember it?

A. Well, that is four and a half years ago, or more, and my independent memory is not clear. Well, the first point in the working agreement is the period of the contract, six months. We discussed that, and the contract, that is, the basic agreement as finally prepared was that the basic agreement should be in effect for a year. The second point raised is the existing contract.

Q. (By Trial Examiner Ruckel) Tell us what the discussion was?

A. Between the company and the employes?

Q. What was the discussion on it, the question of the individual contracts?

A. The individual contracts of employment, how they would be affected by the Wagner Act, if at all.

Q. (By Mr. Evans) Tell us what was said, not just the topic.

2004 A. He was in doubt as to what effect the Wagner Act had on the contracts for individual employment.

Q. What do you mean by that?

A. He hadn't made up his mind whether he had given enough study to it or he hadn't come to a conclusion himself as to what the effect of the Wagner Act might be on these contracts.

Q. (By Trial Examiner Ruckel) That is what he said, Senator?

A. That is what he said.

Q. (By Mr. Evans) What did you say?

A. My position was and I said that I thought it was neither the purpose nor effect of the Wagner Act to disturb such contracts made long prior to the time that the Wagner Act was even considered. He said that the representatives of the union were in favor of the continuation of those contracts, that they prized them, that there were benefits arising under them that they wanted to maintain. I asked him whether it was the position of him and those he represented that those contracts were valid and binding on the parties who made them. He said it was final and that that position would be taken in the basic agreement, he taking the position on the one hand that those he represented were desirous of continuing the contracts,

I taking the position that the company was un-

2005 doubtedly bound by the contracts and could not be put in the position of voluntarily violating them. You can understand how two lawyers discussing a fresh subject might spend quite a good deal of time and how your memory would not avail to reproduce the entire conversation. I remember those as points.

Q. Was there any discussion as to recognition?

A. Yes, we had to come, the union had to be recognized before we could do anything. That question had arisen previously when Mr. Olin wrote me and his letter which I find is dated June 26th, the exhibits to that letter was signed by those who purported to be temporary officers, and my position was that we couldn't transact business with temporary officers, the union would have to be formed before we could transact business with it.

Q. You transmitted that position to Mr. Olin?

A. Yes.

Q. It is your understanding then that no meetings were held with the union until after its formation by reason of your opinion?

A. I don't know anything about that. I know that I never saw anybody connected with that business until I saw Mr. Manning, but you can well understand how it would be a subject of discussion between Mr. Olin and me.

Q. Other than the letter of June 25th, from the union to the company, was there any other matter in writ-
2006 ing that you know of that was submitted with regard to the majority status of the union?

A. No.

Q. Showing you Board's Exhibit 8, for identification, do you recall whether or not that letter, or a copy of it was ever forwarded to you?

A. Not that I recall. That seems to be notification to the Cartridge Company that the union has been formed.

Q. You don't recall having received a copy of it?

A. I don't recall ever having seen that before.

Q. Well, now, was there ever any discussion between you and Mr. Manning as to a working agreement?

A. Yes. It is this working agreement, so-called, that I have been referring to in answer to your question as to what was discussed between Mr. Manning and me.

Q. I see.

Q. (By Trial Examiner Ruckel) Board's Exhibit 9?

A. That is correct, and I had gotten to point two.

Q. (By Mr. Evans) Now, was the discussion on point two as to the existing contract, was there any discussion with respect to that as to what subjects were or were not already covered by the individual contracts?

A. Your question is not quite clear to me, pardon me.

Q. Was there any discussion between you and Mr. Man-
ning as to what subjects were already covered by
2007 the individual contracts and what subjects were open for discussion as to bargaining with the union?

A. I am sure there were.

Q. Can you recall any?

Trial Examiner Ruckel: Copy of that individual contract is here, so you can refresh your recollection from it.

Mr. McRoberts: There is no particular objection to it, but it seems to be utterly immaterial to the issues in this case and taking up considerable time, discussion had between two lawyers about the legal effects of certain documents. I don't know what that has to do with the charge of unfair labor practices.

A. I recall how it would cover it by the basic agreement.

Q. (By Mr. Evans) What is the original contract?

A. What is your name?

Q. My name is Jack Evans.

A. Mr. Evans, this original contract that you refer to, is not the contract that was in force on that day.

Mr. McRoberts: Substantially the same, Senator, if I may interrupt there.

Q. (By Trial Examiner Ruckel) This may have been the one. The only difference seems to be in the last paragraph.

A. Neither of these are exhibits?

Q. (By Mr. Evans) Yes, they are both exhibits.

A. Are they? Which one do you want me to refer to?

2008 Q. Either one. The first one I handed you is Board's Exhibit 16-A, which has been referred to as the original contract, and Board's Exhibit 16-B, which the Trial Examiner handed you is the extension agreement.

Trial Examiner Ruckel: The only difference seems to have been the adding of paragraph 13, at the end, a formal addition of some kind.

A. I think all I can say with any degree of definiteness is that we discussed these contracts in connection with a discussion of the proposed working agreement, and our conclusion about both is embodied in and reflected by the basic agreement, and if you would like to have me refer to those points in the basic agreement that show that these were matters of discussion, I can do it quite readily.

Trial Examiner Ruckel: I think we are familiar with that, Senator.

Q. (By Mr. Evans) The only thing contemplated by the basic agreement are discussions as to modifications or changes of those individual contracts?

A. Not at all. If I understand your question, you are referring to the second paragraph of the basic agreement and I am referring to the first paragraph where it says,

"It is contemplated that from time to time demands and grievances will be made under this agreement," meaning under this basic agreement, "with respect to mat-
2009 ters not covered by the said contract of employment. Such demands and grievances may be initiated either by the company or the union. Negotiations with respect to such matters will be conducted by the accredited representatives of the company and the union," and that was the disposition that was made at that time of the proposed working agreement.

Q. That takes us back to my original question, what matters were contemplated as not being already covered by the individual contracts?

Mr. McRoberts: May I ask, Mr. Examiner, how this is pertinent to the issues in this case?

Trial Examiner Ruckel: Will you enlighten us, Mr. Evans?

Mr. Evans: The relationship between an alleged company dominated union and the company is the basic issue in the case.

Trial Examiner Ruckel: As to that particular charge in the complaint.

Mr. Evans: Now, the question now before us relates to the alleged collective bargaining negotiations, and those negotiations are always relevant as part of the picture, the dealings between the company and the alleged company dominated union.

Mr. McRoberts: Here is discussion between two lawyers expressing their respective opinion regarding the
2010 legal effects of certain documents. Regardless what opinions were expressed by either of them, whether they are right or wrong on the law, the documents are before us, they are in evidence.

Mr. Evans: It so happens that these two lawyers were the representatives that were doing the negotiating between the parties.

Mr. McRoberts: How could any opinion, regardless of what it was, on the part of Senator Williams or Mr. Manning as to the legal effect of the document have any value, any probative value as to whether the company—this union was dominated by the company or not.

Trial Examiner Ruckel: Suppose that Mr. Evans is able

to show that the two lawyers representing the two parties had decided prior to drawing up a contract between their clients that almost nothing was not covered by the individual contracts of employment, that just a few remaining formalities were included within the basic agreement, you might gather from that, together with other evidence, that this new organization which is being formed was formed rather to protect the company's interest rather than the interest of the employes and that it was not an actual and effective bargaining agency. I mean that is the theory.

Mr. McRoberts: That is the extreme case. Now, let's suppose that is true, let's suppose Senator Williams
2011 and Mr. Manning both were of the opinion that these individual contracts covered all matters of collective bargaining, there really wasn't anything else to bargain about. Now, the contracts are before us and those contracts would show that that opinion, in my judgment, would be incorrect, the opinion on the part of those lawyers. What effort can their opinion of those two lawyers in their discussion have upon the merits of this individual controversy? The contract is before us.

Trial Examiner Ruckel: I think it might have considerable. It is conceivable that it might be shown that the purpose of the two negotiators was only to arrive at a contract which involved legal conclusions which would narrow—

Mr. McRoberts: If it has any conceivable value I have no objection to it. Go ahead, Senator.

Mr. Evans: Read the question.

(Question read.)

Mr. Evans: If any, I added, I believe.

Mr. McRoberts: Well, Mr. Examiner, let me suggest the contracts are before us. The contracts do not cover wages, they do not cover hours, they do not cover conditions of employment.

Mr. Evans: Is counsel suggesting what the witness should answer?

Mr. McRoberts: I think the witness is perfectly able to take care of himself on the witness stand. The fact
2012 is that they do not cover wages, and they do not cover hours, they do not cover conditions of employment.

Mr. Evans: Mr. Examiner, I object to counsel making perfectly obvious statements on the record which inform the witness as to his opinion of what the contracts do not cover.

Mr. McRoberts: Are you finished with your objection? Then I will go ahead with my objection.

Mr. Evans: I think that is highly improper, counsel.

The Witness: Let me have that working agreement.

Mr. McRoberts: I will state to the Examiner as I started to state before, they do not cover wages, they do not cover hours, they do not cover conditions of employment. Those contracts are before the Examiner, are before the Board, and they will be before the Court.

Trial Examiner Ruckel: I suppose Mr. Evans' position is that it is the knowledge of the witness which is important at this juncture.

Mr. McRoberts: He is asking this witness what was the opinion of this witness and what was the opinion of Mr. Manning as to the legal effects of these documents. Now, under ordinary circumstances there would be objection to asking the witness to express his opinion. If I asked Senator Williams to express his opinion as to some of these documents they would be objecting and calling—objecting as calling for a conclusion.

2013 Mr. Evans: I didn't ask him for an opinion, I asked him specifically what was contemplated by the parties.

Mr. McRoberts: You asked for opinions they expressed between them in their discussion.

Mr. Evans: That is a fact as to what they said at the time.

Trial Examiner Ruckel: The present question is what matters are contained within the basic agreement which are deemed to be in addition to matters covered in the individual contracts, isn't that the essence of the question?

Mr. Evans: No, the essence of the question is what matters were left open, if any, for negotiation under the basic agreement.

Mr. McRoberts: Mr. Examiner, here is a question, the basic agreement says sole bargaining agent with respect to all matters not covered by the contract of employment.

Mr. Evans: That is right.

Mr. McRoberts: Now, he is saying what in your opinion was not covered by the contract of employment.

Mr. Evans: I am not, counsel, no, sir, I am not. I am asking what the parties discussed in that regard, what they contemplated were matters left open for negotiation, if any.

Mr. McRoberts: In other words, what were the matters not covered by the contracts of employment; the contracts of employment speak for themselves, as to what was not covered by them.

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Trial Examiner Ruckel: The witness may continue if you gentlemen can get together and understand one another.

The Witness: You mean if the witness understands, Mr. Examiner, the question?

Trial Examiner Ruckel: If the witness understands the question, yes.

A. Mr. Manning came to me to discuss this proposed working agreement. I proposed that we not discuss that, that we discuss something that went beyond that, to-wit, the basic agreement. If we got a basic agreement, that basic agreement would be the formula on which demands and grievances raised by the proposed working agreement could be threshed out from time to time as the individual grievances or demands should become urgent, and it was as a result of that that the basic agreement was worked out. We didn't discuss the items of the working agreement for the purpose of negotiating with respect to those, and when Mr. Manning and I had concluded, had concluded our business, the items raised by the proposed working agreement were left out of consideration and for further future consideration.

Q. (By Mr. McRoberts) Left out of future consideration?

A. For future consideration.

Q. (By Trial Examiner Ruckel) What you had was the basic agreement?

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A. And what we had was the basic agreement.

Q. Was there discussion between you and Mr. Manning as to how the basic agreement should be worded so

that the effect of the individual contracts should be retained, was there discussion along that line?

A. I am sure there was.

Q. Give us the nature of that discussion?

A. Well, I can't do much more than to indicate that the result of that discussion found its way into the basic agreement.

Q. (By Mr. Evans) Was there any discussion between you and Mr. Manning as to what employes would be covered by any agreement?

A. You mean what specific employes?

Q. That is right.

A. I am afraid that any individual memory I might have of that would be effected somewhat by the wording of this basic agreement which I have before me.

Q. What do you mean by that?

A. I mean that I am afraid to answer your question for fear that I am not trusting to my memory, but that my memory is being affected by the terms of this basic agreement.

Q. (By Trial Examiner Ruckel) The basic agreement covers all employes, does it not?

A. The basic agreement covers every employe that 2016 had a contract.

Q. (By Mr. Evans) You mean every employe that had an individual contract?

A. Of employment.

Q. Was that the understanding between you and Mr. Manning?

A. It must have been because it is in the basic agreement.

Q. You say that the individual contract was revised in March, 1937?

A. That is my recollection.

Q. Do you have a copy of the contract that we can go into this revision?

Mr. McRoberts: Copy of what?

Mr. Evans: The contract before revision and after revision.

Trial Examiner Ruckel: We will recess for ten minutes.

(Ten minute recess)

(Question read by the reporter.)

A. I might add to that that reference has been made to some question put to me by Mr. McRoberts that refreshes my memory on that point and he says, otherwise I should have said I wouldn't have had an independent memory of that.

Q. (By Mr. Evans) Well, in the absence of the copy of the contract before revision, do you recall now what the revision was?

A. No, I don't have the remotest recollection. I
2017 don't know if there were any changes made. I remember the thing was up for discussion and I would say, Mr. Evans, that those contracts had been the subject of slight change over a period of years from time to time.

Q. That's all.

Trial Examiner Ruckel: I may have a question, Senator. No. Any further questions?

Mr. McRoberts: No further questions.

Mr. McRoberts: Mr. Examiner, I am not certain just how much of our discussion last night with reference to proceedings today occurred off the record, but so that there may be no question about it, may the record show that pursuant to the request of Mr. Ely and to the suggestion of the Examiner, and due to Mr. Ely's engagement in a trial at St. Louis today, that we are putting on some additional testimony which is really being offered on behalf of the independent union.

Trial Examiner Ruckel: That is to cover what Mr. Ely would be doing if he were present?

Mr. McRoberts: Yes.

Trial Examiner Ruckel: I think he indicated he could not be back before Friday.

Mr. McRoberts: Yes. Mr. Ely advised me that he had a case that he had to start in trial in the Circuit Court in St. Louis this morning, that it would probably take
2018 two or three days to try, and rather than postpone this hearing further waiting for his return, I offered and am willing to put on this evidence for him in his absence.

Trial Examiner Ruckel: I appreciate your compliance with my suggestion to save time.

HOWARD TUETH,

a witness called by and on behalf of the Intervenor, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. McRoberts) Will you state your name, please?

A. Howard Tueth.

Q. Where do you live, Mr. Tueth?

A. In Alton, Madison County.

Q. Where are you employed?

A. Western Cartridge Company.

Q. In what capacity?

A. I am a mechanical draftsman.

Q. How long have you been with the company?

A. About nine or ten years. I can give you the—

Q. That is close enough. Mr. Tueth, were you employed by the company in 1937?

A. Yes, sir.

Q. In what capacity were you employed then?

A. I was in the office of the brass mill, just general
2019 clerical and engineering work.

Q. Were you acting in a supervisory capacity in any respect?

A. No, sir.

Q. Mr. Tueth, did you have anything to do with the organization of the Western Cartridge Employes Independent Union?

A. After organization had started I became active in it.

Q. What was your first connection with this independent union, where did you first hear of it?

A. I heard it talked among the employes.

Q. Did any foreman or supervisor or superintendent or officer of the company then, or at any time, say anything to you about joining or refraining from joining this independent union?

A. They did not.

Q. You say you heard the talk among the employes?

A. Yes, sir.

Q. By employes, are you referring to supervisory employes?

A. No, sir.

Q. Or just production and maintenance and clerical employes?

A. My talks were mostly with the mill employes.

Q. Do you remember who first mentioned it to you?

A. Gerald Schauerte, and I don't remember anybody else, I don't remember any specific instance. I am not sure that Schauerte was the first one that mentioned it to me.

2020 Q. At any rate it was some of the employes of the mill?

A. Some of the employes, yes.

Q. And following this, what did you do about it?

A. Well, I didn't do much of anything, except just general discussion.

Q. Were you a member of the original committee that met in Mr. Manning's office on June 4, 1937?

A. I was.

Q. And did you—I believe the minutes show you were elected temporary chairman of the union?

A. Yes, sir.

Q. And you served as temporary chairman until the permanent officers were elected?

A. Yes, sir.

Q. Did you thereafter hold office in the union?

A. No, I did not.

Q. You remained a member?

A. I remained a member.

Q. Mr. Tueth, did you participate in soliciting other employes to join the union?

A. Yes, sir.

Q. Mr. Tueth, how did you happen to join this particular union, why did you join this union as compared with an affiliated union?

A. Well, I wanted to join in order to help in an
2021 increase in the general wage level of the company.

Q. Had you had any experience with affiliated unions; that is, the CIO or the AFofL Unions before this time, Mr. Tueth?

A. No, sir.

Q. You had not?

A. I had none.

Q. That's all.

Cross Examination.

Q. (By Mr. Evans) Was there any affiliated union at or about that time that was attempting to organize the employes, passing out leaflets and that sort of thing?

A. Well, there was rumors, I believe.

Q. What were the rumors?

A. There were some pamphlets, I believe. I don't know what union it was.

Q. Was it a CIO union?

A. I don't know.

Q. You say you joined this because you would rather join an independent union than an affiliated union?

A. I don't know definitely, I never did have an opinion formulated in my own mind for sure as to just which union was the best.

Q. Well, then, you didn't join the independent union because you favored the independent over an affiliated union, is that correct?

2022 A. Well—

Q. You now state you had no opinion in that regard?

A. I thought the independent was the best union. I don't know exactly why, but I did think the independent union was the best.

Q. And you thought that the independent union could get you higher wage levels than an affiliated union?

A. I had never had any discussion with an affiliated union, I had never had anybody talk to me, or I didn't know anything about that at all.

Q. Where did you get this idea then?

A. Well, it was the opinion of the majority of the employes that I had conversations with that that seemed to be what they wanted, they all thought that was what they wanted, and I sort of went along with the majority.

Q. Did you think at that time that the company would prefer to deal with an independent union rather than a CIO union?

Mr. McRoberts: Well, I object unless he shows some basis for such opinion. What this witness may have thought is certainly not binding upon the company in any way.

Trial Examiner Ruckel: Objection sustained.

Mr. Evans: Mr. Examiner, I think this entire testimony is nothing but opinion evidence. I agree with you that it is immaterial, but having gone in so far I don't think one side should be stopped on the issue and the other
2023 permitted. If your ruling stands, I move to strike this testimony to make it conform, make it consistent with the ruling.

Trial Examiner Ruckel: I agree that the nature of the evidence is very unsatisfactory at the best. I think I will reverse my ruling, though, and he may answer, inasmuch as he is subject to cross examination, and with the understanding that the question should be followed up and made specific so as to find out whether or not actually it is based on anything representatives of the company said or did. I think that would be more consistent with the nature of the testimony on direct. Read the last question.

(Last question read.)

Mr. McRoberts: Mr. Examiner, are you ruling that he must first ask whether there was anything said or done?

Trial Examiner Ruckel: No, he may answer the question. He may be cross examined, and on counsel's further questioning he may attempt to find out whether that was based on anything concrete attributable to the company.

A. Will you repeat the question?

(Question re-read.)

A. I thought they would.

Q. (By Mr. Evans) Now, tell us what you based that thought on?

A. Well, I haven't given it a lot of thought. Let's see, it has been so long ago, I believe that at the par-
2024 ticular time there was a lot of agitation, strikes throughout the country, I believe that it is what it was, and that helped me at that particular time in forming my opinion.

Q. That's all.

Redirect Examination.

Q. (By Mr. McRoberts) That is the only thing you can say as the basis for any such opinion, is it, Mr. Tueth? Let me put it this way, did anybody from the company

tell you that they would rather deal with an independent union than—

A. They did not.

Q. (By Trial Examiner Ruckel) That is, any foreman?

A. No.

Q. (By Mr. McRoberts) Foremen, supervisors, officials or superintendent?

A. No, sir.

Mr. McRoberts: I move that the answer of the witness as to what he thought on that matter be stricken.

Mr. Evans: Well, if that is stricken, this whole testimony should go out.

Trial Examiner Ruckel: It may stand.

Mr. McRoberts: That's all.

ROBERT McMANUS,

a witness called by and on behalf of the Intervenor, being first duly sworn, was examined and testified, as follows:

2025 Direct Examination.

Q. (By Mr. McRoberts) Will you state your name, please?

A. Robert McManus.

Q. Where do you live, Mr. McManus?

A. 186 Pence, East Alton.

Q. Where are you employed?

A. Western Cartridge.

Q. What is your position there?

A. Supervisor in the tool room.

Q. How long have you been supervisor?

A. About a month and a half.

Q. Before that what was your position?

A. Just stock clerk.

Q. Stock clerk?

A. Yes, sir.

Q. How long had you been a stock clerk there, Mr. McManus?

A. Fourteen years.

Q. Were you a stock clerk in 1937?

A. Yes, sir.

Q. Did you have anything to do with the formation of the Western Cartridge Employes Independent Union?

A. Yes, sir.

Q. When did you first hear of that matter?

A. Three or four days before we had our first meeting.

Q. By your first meeting are you referring to the
2026 meeting of June 4th, in Mr. Manning's office, June 4, 1937, as shown by the minutes?

A. I am not sure of the date, but the first meeting was in his office, I don't remember the date.

Q. It was about three or four days before that date that you first heard of the matter?

A. Yes, sir.

Q. From whom did you hear of it?

A. Just different ones around the plant.

Q. Did any foreman or supervisor or superintendent or official of the company speak to you about the independent union at that time?

A. No, sir.

Q. Or at any other time?

A. No, sir.

Q. Before or since?

A. No, sir.

Q. Any of such people ever urge you to join it?

A. No, sir.

Q. Or to organize it?

A. No officials, no.

Q. By officials, distinguishing between officials, to whom are you referring, other employes?

A. Other employes urged me to help organize it.

Q. No foreman ever urged you to help organize it
2027 or do anything in connection with the union, for or against, is that correct?

A. No, sir.

Q. Now, do you remember who first spoke to you about it?

A. Gerald Schauerte was the first one I talked to directly about it.

Q. And following that, what did you do?

A. At that time it was about four o'clock in the afternoon. I went out in the cafeteria for the last smoke of

the day, and he was out there, he and Howard Tueth and two or three more, and he said, "Say, how about coming down to Manning's office tonight to help us organize this union?" I said, "All right, I haven't anything to do".

Q. Did you go down there to Mr. Manning's office?

A. I did.

Q. Thereafter participate in the organization of the union?

A. Yes, sir.

Q. And did you become an officer of the union?

A. Just was on the temporary committee until we had our first election.

Q. You were on the temporary committee?

A. Just the temporary committee.

Q. And then sometime in July they elected their permanent officers?

A. That is right.

2028 Q. Mr. McManus, had you had any prior experience, you, or members of your family in union matters?

A. Not in union matters, no.

Q. Were you ever a member of any other union before that?

A. I was.

Q. Which union were you a member of?

A. Brotherhood of Railroad Trainmen.

Q. (By Trial Examiner Ruckel) When was that?

A. 1921 to 1924.

Q. (By Mr. McRoberts) Mr. McManus will you tell us why you were interested in helping organize this union and become a member?

Mr. Evans: Objection; immaterial. Calls for opinion evidence. The Examiner indicated on a previous witness that such material was irrelevant, incompetent and immaterial.

Trial Examiner Ruckel: What is the counsel for the respondent's contention with respect to this type of evidence?

Mr. McRoberts: Well, the Circuit Court of Appeals for the Eighth Circuit has expressly held in the last month or so that it is admissible, Mr. Examiner, bears upon the question as to whether this is a company dominated union, to show that the people joined it—the contention of the

Board is that they joined because they were coerced by the company. The best way to show, to refute that
2029 contention is to show the real reason why they joined, which was some other reason that the fact that they were coerced.

Mr. Evans: I don't think the Circuit Court has so ruled, counsel. I think the ruling was on the technicality of a subpoena.

Mr. McRoberts: I am referring to the Donnelly case, and the opinion in that case would really show what was ruled, and apart from the Donnelly case I think it is undoubtedly the law.

Trial Examiner Ruckel: That is the only Circuit in the country that has so ruled.

Mr. Evans: Out of ten circuits, isn't that correct?

Mr. McRoberts: Pardon me?

Mr. Evans: Out of ten circuits, isn't that correct?

Mr. McRoberts: I don't know of any circuit that has ruled to the contrary.

Trial Examiner Ruckel: Well, how many more witnesses of this type do you propose to put on?

Mr. McRoberts: The situation is this, Mr. Examiner, we have several more of this original group that organized this union. We propose to put on the witness stand every one of that original group which is still in town and available. Mr. Schauerte, whose name has been mentioned several times, is, according to our information, in California, and is no longer available. There may be one or
2030 more of the others that are not available, I am not certain, but all who are here and are available and can be put on will be put on to show the circumstances of the organization of the union. In addition to that we have different officers of the union, covering different periods from 1937, down to date, who can testify as to not only their connection with the union and reasons for joining, but as to the way in which the affairs of the union were conducted. Then in addition to that the union has, I don't know the exact number, they have a large group of the members in the union now available and ready to testify and are prepared to get, I will say, substantially every member of the union, prepared to testify as to the circumstances and reasons for his or her joining the union.

I say substantially all, because some members of the union are not available and may not be reached. So far as my information goes, there is no member of the union who would not so testify.

Trial Examiner Ruckel: Well, I can see how—

Mr. Evans: Now, counsel, have you interviewed all these persons, on which you base that statement?

Mr. McRoberts: I have not, but I am told by the officials of the union who have talked to them, Mr. Chapman and these other men who are here prepared to so testify, and by the time they are exhausted I think we will have amply more. I am told by the officials of the union,

2031 and am I correct that as far as you know substantially every member of the union would so testify if I should call him?

Mr. Chapman: I think so, yes, sir.

Trial Examiner Ruckel: Well, I can see the distinction between those who originally formed the union such as this man and those who subsequently became members or even officers. Their reasons for joining the union are bound to be so subtle and involved that I don't think the testimony would help.

Mr. McRoberts: No one would know better than the men themselves why they joined.

Trial Examiner Ruckel: Why they joined and why the union was formed are two different things.

Mr. McRoberts: I agree with you there, yes, there is a distinction between the type of witnesses, and this witness is being asked that question merely as part of the entire picture.

Trial Examiner Ruckel: How many of these original organizers of the union do you have in mind?

Mr. McRoberts: Oh, half a dozen or more, Mr. Examiner.

Trial Examiner Ruckel: Well, we will hear their testimony. The witness can answer. Read the question to the witness.

(Last question read)

Trial Examiner Ruckel: You may answer.

2032 A. There had been quite a bit of talk of the CIO down at the plant, and I knew and several of the rest of us knew that it would not operate in there because we would have adjusters in with the machinist class and

we would have trouble there, truckers would be common laborers. It couldn't work that way. We discussed that two or three times in a group and all we seen we were going to have hell or a lot of lost time, if you will pardon my language, have a lot of lost time.

Q. (By Mr. McRoberts) Is that what you discussed among yourselves, what was said?

A. Yes, sir.

Q. (By Trial Examiner Ruckel) Loss of time due to what?

A. To these different arguments about the adjusters being classed with the machinists and the truckers with the laborers, they would have an argument there.

Q. (By Mr. McRoberts) Was the question of strikes being called because of disputes with other people considered and discussed among you?

A. No, we were afraid of the CIO and that we would lose a lot of time on account of strikes.

Q. That is what I mean. What was your feeling about the control of your union by people other than employes of the company?

Trial Examiner Ruckel: Well, I think the question ought to be a lot less leading.

2033 Mr. McRoberts: I asked what his feeling was. I don't know how that is leading.

Trial Examiner Ruckel: That is a leading question. Let the witness give us all his reasons for helping to form this union without it being suggested that there might have been other reasons.

Mr. McRoberts: I am simply directing his attention to one thing, and asking one way or the other what his attitude was.

Trial Examiner Ruckel: I still think it is leading.

Q. (By Mr. McRoberts) What else was discussed, let me put it that way, were there any other reasons in your mind that were discussed among you with respect to the advantages or disadvantages of an independent union as compared with the CIO?

A. We talked with several members from the Standard Oil, and they were using the same set up down there and they had very little complaints.

Q. By same set up what do you mean, Mr. McManus?

A. Same collective bargaining.

Q. What kind of a union do they have at the Standard Oil Company?

A. This collective bargaining independent union.

Q. Independent union?

A. Yes, sir.

2034 Q. And not an affiliated union?

A. No, sir.

Q. And you say you talked with members, is that employes of the Standard Oil Company?

A. Employes, yes.

Q. You are referring to the Standard Oil Company at Wood River, is that right?

A. That is right.

Q. Which is a community immediately adjacent to East Alton?

A. Yes, sir.

Q. And a number of your members live over in Wood River?

A. Yes, sir.

Q. Now, were there any other reasons that you can think of, or any other discussions among this original group as to why you preferred your independent union?

A. I believe those are the main objectives we had.

Q. Following that, Mr. McManus—specifically, did any foreman or supervisor or company representative participate in any of those discussions?

A. No, sir.

Q. Following that what did you do, Mr. McManus?

A. Well, this afternoon that they told me there was going to be a meeting that night, we proceeding on down to Manning's office.

Q. The details of your organization I am not going
2035 into because that is covered by the minutes, Mr. McManus. You did participate in the original meetings and organizing activities of the union, did you not?

A. I did up until after the election, our first election.

Q. That is the election of permanent officers?

A. Yes, sir.

Q. Which took place sometime in July?

A. Yes, sir.

Q. You were not elected an officer?

A. No, I was still a clerk at the election, still on the temporary committee.

Q. You were one of the clerks at the election?

A. I was.

Q. Mr. McManus, were you a clerk at the election for the adoption of the constitution?

A. I was.

Q. Tell us who was permitted to vote at that election, that vote for the adoption or rejection of the constitution?

A. Just the paid up members.

Q. And did you have lists of members that you used to check people entitled to vote there?

A. We did.

Q. Those were lists of members of the union?

A. Yes, sir.

Q. Those lists were the same or similar to those
2036 contained in the minute books of the company, Respondent's Exhibit 25, particularly the meeting of June 16th, and some of the following meetings?

A. We had the lists made off from different divisions.

Q. I see. At the election you tellers had a list for each of the six divisions of the union?

A. That is right.

Q. You permitted only paid up members to vote, is that correct?

A. That is right.

Q. If any people came there and wanted to vote who weren't members or weren't paid up, what did you do?

A. We asked them if they wanted to join.

Q. Signed them up there?

A. Signed them up there and they voted.

Q. And it is true that some eighteen hundred odd people voted at that election?

A. I don't recall the amount. I know there was quite a few.

Q. After the union got its permanent organization and elected those representatives, you didn't participate in any of the bargaining meetings with the company?

A. No, sir.

Q. Or any of the meetings for the adoption of the basic agreement or otherwise?

2037 A. No, sir.

Q. I think that's all.

Cross Examination.

Q. (By Mr. Evans) How many men do you supervise now?

A. Six.

Q. At the time you joined this independent union, did you think that the company preferred to deal with an independent union rather than an outside union?

Mr. McRoberts: I object to that, unless the reasons for any such opinion are given and shown based upon something binding upon the company.

Trial Examiner Ruckel: He may tell us—he may answer and then tell us; follow the procedure of the last witness.

A. We didn't consider that.

Q. (By Mr. Evans) At this election, which was held at the fire house, was it?

A. Downstairs here, yes.

Q. Did you have anything to do with the preparation of those lists which were used?

A. I did.

Q. Will you tell us what you did?

A. Our secretary over in Manning's office two or three nights before the election had the membership cards. He would call off a name and each representative, he would say that person is in a group and he wrote it down
2038 on a piece of paper with a pencil, he called the names off. Each man would know the department that person worked in, and they probably would put those down in different groups.

Q. How were the dues collections recorded from the list so as to show that they were paid up members?

A. We made these lists off or our paid up cards.

Q. And where did you get the paid up cards?

A. We had them in our file.

Q. How were they prepared?

A. There was the date of the month on the back of the card, the 25 cent entry was posted there and the secretary's name on the front of the card, the temporary secretary.

Q. Did you have anything to do with making those recordings?

A. No, sir.

Q. And from what were those recordings made, if you know?

A. You mean membership cards?

Q. Well, these cards that you say had these recordings on them of the 25 cents, from what was that taken?

A. Different ones of us were handed these cards, and when we gave a person a card and got the money, we just inserted the 25 cents up on the back of their card.

Q. You mean their application card?

A. No, the membership card, and we initialed it.

Q. Where did you get the membership card?

2039 A. Our secretary gave it to me.

Q. So you put on the back of the membership card the fact that he had paid?

A. Yes.

Q. Then you gave it to the individual?

A. That is right.

Q. What did you keep to show from whom you had gotten 25 cents?

A. We had a duplicate set of cards.

Q. Were those these cards that you have just referred to?

A. The membership cards.

Q. Then did you carry around with you these duplicate cards, and when a man paid you 25 cents—

A. I didn't carry the duplicate cards, no.

Q. How would you get from the man to the place where the duplicate cards were, to record?

A. I would put it down on paper in a note book who paid me and turn that slip of paper in to the secretary.

Q. Were only persons who had paid the 25 cents considered members of the union?

A. That is right.

Q. Any person who had signed a card but who had not paid up, the union would not be the bargaining representative?

Mr. McRoberts: Wait just a moment, you are asking for this man's opinion of the constitution.

2040 Mr. Evans: No, I am asking him—

Trial Examiner Ruckel: Read the last question.

Mr. Evans: —what the fact was.

(Question read.)

Mr. McRoberts: You didn't ask for the facts.

Trial Examiner Ruckel: Objection sustained.

Q. (By Mr. Evans) Was there any discussion at your meetings concerning the status of an employe who signed an application card but who did not pay up?

A. No, not that I know of.

Q. Were there any such persons, to your knowledge?

A. We didn't contact anybody only who we knew were eligible, if that is what you mean?

Q. What do you mean by that?

A. We knew the supervisors and foremen were not allowed in the organization.

Q. I am talking now about persons who signed cards, application cards and who did not pay dues. Were there any such persons?

A. Not that I know of.

Q. You think all of them paid 25 cents, at least?

A. That signed the cards, yes.

Q. Do you have charge of the financial records in that regard?

A. No, sir.

2041 Q. You were just one of the organizing committee?

A. That is right.

Q. That is all.

Redirect Examination.

Q. (By Mr. McRoberts) Mr. McManus, were any foremen or supervisors of the company admitted to membership in the union, so far as you know?

A. No, sir.

Q. That's all.

Trial Examiner Ruckel: That's all.

Recross Examination.

Q. (By Mr. Evans) One other question. Did you work on the day shift back there in 1937?

A. Continuously, yes.

Q. Did you at any time go into the plant at night, for any purpose?

A. I didn't go back in. I worked overtime sometimes.

Q. Did you ever stay overtime and talk to any of the employes about the independent union?

A. Not purposely for that. I may have spoke to somebody when I was working overtime about it a minute or two.

Q. Did you ever stay over after your shift was over and talk to employes?

A. Not that alone.

Q. That's all.

2042 Redirect Examination.

Q. (By Mr. McRoberts) Mr. McManus, if I understand you correctly, on occasions you would have to work overtime, is that right?

A. Yes, sir.

Q. And while you were working overtime you may have mentioned the independent union to employes of the company?

A. Yes, sir.

Q. That's all.

IRA WILKERSON,

a witness called by and on behalf of the Intervenor, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. McRoberts) Will you state your name, please?

A. Ira Wilkerson.

Q. Where do you live, Mr. Wilkerson?

A. 873 Halley, Wood River.

Q. Where are you employed?

A. Western Cartridge.

Q. What is your position there?

A. Scrap man.

Q. In what department is that?

A. Slitters, in the brass mill.

Q. Are you a foreman or supervisor?

2043 A. I am not.

Q. Have you ever been for the company?

A. Yes, sir.

Q. When were you a foreman or supervisor?

A. Along about 1927 or '28.

Q. In 1937, what kind of work did you do for the company?

A. Working in the brass mill stock room.

Q. Were you a foreman or supervisor at that time?

A. I was not.

Q. Did you have anything to do with the independent union, Mr. Wilkerson?

A. Yes, sir.

Q. What was your first contact with the organization of that union, when did you first hear of it?

A. Well, I don't know, it was in 1937, sometime in June, I believe it was. I am not positive.

Q. Mr. Wilkerson, the minutes of the independent union show a meeting, the first meeting on June 4th, 1937, at Mr. Manning's office?

A. Well, I wasn't at the first meeting, I was at the second meeting.

Q. And how long before you attended the meeting was it when you first heard of this matter?

A. One or two days, I don't know just how long.

Q. Do you remember who spoke to you about it first?

2044 A. Charles Taylor, I believe it was.

Q. Charles Taylor?

A. Yes, sir.

Q. Now, did any foreman or supervisor or official of the company speak to you about joining the independent union at that time?

A. They did not.

Q. Or about organizing or assisting in organizing?

A. They did not.

Q. At that time or any time since then?

A. No time.

Q. When Taylor first spoke to you about it, very briefly, what was said?

A. Well, he just remarked that they were organizing an independent union, and said they were going to meet, I don't remember what night, but they were going to meet in Manning's office, and invited me down.

Q. Did you go down?

A. Yes, sir, I went down.

Q. Did you thereafter participate in the organization?

A. I think I was in every meeting held in Mr. Manning's office but one afterwards.

Q. And the election of permanent officers was sometime in July, 1937, according to the records, Mr. Wilkerson. Were you there?

2045 A. I think it was the latter part of July, I am not positive.

Q. Were you elected an officer?

A. No, sir, I was not.

Q. After the permanent officers were elected, did you take an active part in the union affairs, or just remain a member?

A. Just a member, that is all I have ever taken since.

Q. Pardon?

A. All I have ever taken since. When we got it started, that is all I have ever did since.

Q. Mr. Wilkerson, why were you interested in organizing and joining an independent union?

A. Because in my own mind I thought it would benefit us.

Q. Had you ever had any experience in union matters before?

A. I have.

Q. What was your experience?

A. I was mixed in a strike.

Q. In what union was that?

A. United Brick & Clay Workers.

Q. How long before, some years ago?

A. Several years ago.

Q. Was that A. F. of L. Union?

A. Yes, sir.

2046 Q. You had been a member of the union?

A. I was a member of it.

Q. At the time of the strike you are referring to?

A. Yes, sir.

Q. That was before you were connected with the Western Cartridge Company?

A. Yes, sir.

Q. What did your experience in that strike make you feel about joining either the A. F. of L. or the C. I. O. Union?

A. Well, do you want to know how I felt about it?

Q. Yes, sir, tell us exactly how you felt about it in 1937?

A. Because I don't care how many strikes you have you will lose if you gain.

Q. Why did you think that the independent union, or did you think, that the independent union would produce less strikes than an affiliated union?

A. Because I think that a bunch of men with their own representatives can get much further with any company if they will go at it in the right way than they can with outsiders.

Q. Was that your feeling in 1937?

A. Yes, sir, that was my feeling, and it is still my feeling.

Q. Did you express that to other men in the organization?

2047 A. Yes, sir, I expressed it in our meetings when we were organizing this union.

Q. Did you express it to other employes in the plant?

A. Yes, sir, in talking to the employes I told them my experience, told them what a strike was, what a strike meant.

Q. How long had this strike of yours lasted that you speak of?

A. In fact, it is still a strike.

Q. It was never settled?

A. It has never been settled.

Q. Was there any other reason why you were interested in forming and joining this independent union? If so, you may tell us.

A. No, there was none.

Q. Did any foreman or supervisor or superintendent or official of the company at any time give you any advice or instructions or directions about this independent union?

A. No, sir.

Q. Or discuss it with you?

A. They did not.

Q. Had you been approached to join the C. I. O. at that time, in 1937, Mr. Wilkerson?

A. No, sir, I had not.

Q. Had you heard that there was some activity on 2048 the part of the C. I. O. then?

A. Well, I wouldn't say.

Q. You don't recall. That's all.

Cross Examination.

Q. (By Mr. Evans) Did you talk about the independent union around the plant?

A. Yes, sir.

Q. Carry cards with you?

A. Yes, sir, I carried cards with me.

Q. Handed them out to employes at the time?

A. Yes, sir, I did.

Q. Did the foreman ever stop you from doing that?

A. No, sir. That was one thing, I stayed clear of the foreman in doing it.

Q. You were in the stock room?

A. Worked in the stock room at the brass mill at that time.

Q. So that large numbers of employes came to the stock room to get materials and tools?

A. No, my work at that time, I was all over the mill at that time.

Q. Over the brass mill?

A. Yes, sir, I was working as—supposed to be in the stock room, but my job was taking care of the metal that was left over on orders, working it out on other orders, and I was all over the mill looking after the extra stock.

2049 Q. So you had an opportunity to get around?

A. I had an opportunity to be all over the mill, that was my job and had been for two or three years. I naturally kept a bunch of application cards in my pocket.

Q. Did you collect money when you signed these cards, or when you had these cards signed?

A. Not at the beginning I didn't, no, sir.

Q. Did you later?

A. When we got our cards and got our charter organized, I did, I handed out cards and collected their membership fees, yes, sir.

Q. That was after the adoption of the constitution, is that what you mean by after you were organized?

A. Yes, it was after the adoption of the constitution.

Q. For all the cards you collected before that time you didn't receive any 25 cents?

A. I might have received some, but not very much. Very

little money I collected, only I did hand out a bunch of cards after the constitution was adopted.

Q. Were you fired from this job during this strike that took place?

Mr. McRoberts: Which do you mean, at the Western?

Mr. Evans: Sometime ago, you said in connection with the Brick & Clay Workers.

Trial Examiner Ruckel: Well, why go into that?
2050 You are getting farther and farther afield.

Mr. Evans: I agree with you, but the company brought it up in these conversations.

A. No, I wasn't fired. There was two hundred and fifteen boys came out on strike and to the best of my knowledge there is a hundred and eighty-five still out.

Q. (By Mr. Evans) You haven't sat in on any of the bargaining negotiations that this union had with the company?

A. I have not.

Q. You said that that independent union would benefit the employes. In what respect?

A. Well, I think if a bunch of men will organize themselves together and have their leaders, if they would have any grievance or anything that they could take it up with the company more so than as an individual.

Q. You think it should be limited to grievances?

A. No, I do not, because I think that if you want a raise or anything you have got your representatives then to meet with the company in regard to any raise or anything pertaining to your working conditions or anything else.

Q. That is all—oh, how long were you a foreman?

A. Oh, I don't know, I was foreman over the pickle job in the brass mill, I don't know how long.

Q. Several years?

A. Something like a year, I guess. I acted as pickle
2051 foreman in there some, I was extra pickle foreman in there for two or three years, I guess. When the regular foreman wasn't there I acted as foreman.

Q. Ever hold any other supervisory job?

A. Nothing, only down on the millers and the scalpers in the brass mill.

Q. When was that?

A. Sometime before 1929, I don't remember. Might have been the first part of 1929.

Q. Any other?

A. That's all.

Q. That's all.

Redirect Examination.

Q. (By Mr. McRoberts) What was the last year in which you held a foreman's position with Western Cartridge?

A. Before the crash in 1929, or sometime before that.

Q. That's all.

Trial Examiner Ruckel: We will recess until 1:30.

At this point, at 12:30 o'clock p. m., a recess was declared until 1:30 o'clock p. m., of the same day.

2052 After Recess.

The above entitled matter came on for hearing at 1:30 o'clock P. M. pursuant to recess:

Trial Examiner Ruckel: The hearing will come to order, please.

KENNETH LADD,

a witness called by and on behalf of the Intervenor, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. McRoberts) Will you state your name, please?

A. Kenneth Ladd.

Q. Where do you live, Mr. Ladd?

A. 140 Lincoln, East Alton, Illinois.

Q. Where are you employed?

A. Sir?

Q. Where are you employed?

A. Western.

Q. How long have you been with Western Cartridge Company?

A. I hired in there in 1921 and then I quit in 1921, came back in 1922, I believe, or 1921.

Q. What is your position with the company now?

A. Up until last week I was assistant foreman on nights,

and now I am working on machines in there. We took off the second shift.

Q. What was your position with the company in 1937?

2053 A. 1937, I was machine adjuster.

Q. Machine adjuster?

A. That is right.

Q. In the brass mill?

A. No, sir, in the empty shell.

Q. In the empty shell department?

A. Yes, sir.

Q. Mr. Ladd, did you participate in the formation of the Western Cartridge Employes Independent Union?

A. Yes, sir.

Q. What was the first that you heard of that organization?

A. Taylor told me about it.

Q. Charles Taylor?

A. Yes, sir, and asked that the Big Ladd and I; that is, Goebbel Ladd—

Q. There was another employe there by the name of Goebbel Ladd?

A. That is right, he was Big Ladd, they called him, the big fellow.

Q. Is he related to you?

A. No, sir.

Q. Is he still with the company?

A. No, I believe he works over at the St. Louis plant, now.

Q. At the St. Louis plant?

2054 A. Yes, sir.

Q. Now, you started to say what Taylor said to you.

A. Taylor asked me if we would help him on that union, and I said I didn't know anything about it at that time, and then he went ahead and explained it to me. And I said, "Why, yes, I guess so".

Q. What did he explain to you, Mr. Ladd?

A. That they were going to form an independent union, and I asked him how much the dues would be, and he said he didn't know that he thought they would be about 25 cents a month, but there wasn't anything at all done about it, I don't think, at that time.

Q. What did you tell him?

A. I told him all right.

Q. Then after that did you attend meetings of the group to organize this independent union?

A. Yes, sir, there was ten of us, if I remember right. I believe my union card was No. 10.

Q. And you attended these meetings over at the office of Francis Manning, in Wood River?

A. That is right; lawyer Manning.

Q. Mr. Ladd, did any foreman or supervisory official, or superintendent or official of the company ever say anything to you about organizing this union?

A. No, it was Taylor.

2055 Q. He wasn't a foreman or supervisor?

A. No, he was a machinist. I believe he had finished his trade then and was a machinist.

Q. He was just a machinist?

A. Yes.

Q. Aside from Taylor, did any foreman or any supervisor or any official of the company ever say anything to you about forming this union or about joining this union?

A. No.

Q. How did you then happen to, or why were you interested in joining this union, Mr. Ladd?

A. Well—

Trial Examiner Ruckel: And organizing it.

Q. (By Mr. McRoberts) And organizing it and joining why were you interested in forming this independent union and organizing it and becoming a member?

A. Well, it seemed like they were organizing unions all over everywhere about that time, and it seemed to be not so much my opinion, but what I heard the rest of them talk, that we ought to have some kind of a union down there, so they all talked about it, said they would rather have an independent union than one of the others, so we went down to Manning's office then, and I think, if I remember right, it has been quite awhile ago, I don't remember it so well—

Q. Did anybody ask you to join the C. I. O. or

2056 A. F. of L. union at that time?

A. No, sir.

Q. After you attended this organization meeting at Mr. Manning's office, did you ever become an officer of the union?

A. No, sir. You see, there was ten of us down there, and as soon as we had organized it, then they went ahead and elected officers, and we were automatically out. I don't think any of us had anything of the original ten, I don't remember, but I don't believe there were any of those were the next set of officers.

Q. Was Berkley Wilmering one of your original group?

A. Yes, sir, he was from the powder mill, I believe.

Q. How about Conrad Barkley?

A. Barkley, yes, sir; he was from metallic.

Q. Was he one of the original group?

A. I believe he was. I can't remember very well.

Q. Do you recall whether they were two of the original executive board of the union, whether they were elected as representatives?

A. I don't believe Barkley was one of the ten down there, but one of the Barkley boys was on the board at one time, I believe.

Q. After that, were you ever later on elected an officer or representative in the union, the independent union?

2057 A. No, sir, they put me out of the union a while after that on account I was foreman, I got to be foreman, or just supervisor for awhile and then I forget what the shift was, it changed back and then I started paying again.

Q. While you were a foreman, you were put out of the union, is that right?

A. They put me out then, and then again, about two years ago. I haven't paid any since then, about two years ago.

Q. No foremen or supervisors were permitted to be members of this union, is that right?

A. Not that I know of. In the original down there they said not, but then I wasn't on the board, but there wasn't any that I know of, and they didn't take my money after that.

Q. You didn't participate in any of the bargaining between the union and the company?

A. No, sir, that was after.

Q. That's all.

Cross Examination.

Q. (By Mr. Evans) Did Taylor, Mr. Ladd, say he had talked to Bassett about it?

A. No, sir, I didn't know anything about that until the wife read it in the paper last night, that is the first I ever heard of that.

Q. Was Taylor the only one you talked to about
2058 it before going to Manning's office?

A. No, there was Goebbel Ladd, and some fellow from the brass mill, I don't remember, he was a kind of an elderly like fellow, and Wilmering.

Q. Wilmering was from the smokeless powder?

A. Seemed like he had something to do with the detonator, too, about that time, maybe that set up included the detonator.

Q. These discussions took place in the plant during working hours?

A. No. When Taylor talked to me, it was out there where we parked the cars.

Q. Who was your boss at that time?

A. Al Heinrichs.

Q. Had you been foreman before this time?

A. No, I had been adjuster up until that time.

Q. What does an adjuster do?

A. An adjuster keeps the machines running, it is a mechanical job.

Q. Millwright?

A. No, a millwright is a guy that installs machines, or changes them. It is a maintenance job on automatic machinery I would say.

Q. You got around the plant considerably?

A. No, sir, we just have—the way the adjuster set
2059 up is, the adjuster is kept on one line of machines, there is very few adjusters take care of more than one line of machines. The way it is now, an adjuster supervisor will be over more than one line of machines, like a winder or cutter line or sizer line, or something like that.

Q. Do you work on the same line, did you work on the same line every day, or were you shifted from day to day?

A. No, we were on the same line every day.

Q. How many employes, approximately, work on the line?

A. Probably twenty. There were more girls than men, you know, operators of the machines.

Q. How soon after your efforts on behalf of this union were you made a supervisor?

A. Well, not until they started to get the overlay machine there.

Q. Tell us about when it was?

A. It must have been in 1939 or '40.

Q. That's all.

Mr. McRoberts: Mr. Examiner, I want to apply for a subpoena for Mr. Manuel Wiseman of Alton, Illinois, who was the attorney for the independent union for, I believe, two years.

Trial Examiner Ruckel: Off the record.

(Discussion off the record.)

2060 MITCHELL JACKSON,

a witness called by and on behalf of the Intervenor, being first duly sworn, was examined and testified, as follows:

Direct Examination.

Q. (By Mr. McRoberts) Will you state your name, please?

A. Mitchell Jackson.

Q. Where do you live, Mr. Jackson?

A. 111 Whitelock, East Alton.

Q. Where are you employed?

A. Western Cartridge Company.

Q. What is your position with the company?

A. Supervisor, stock supervisor.

Q. In what department?

A. Brass mill.

Q. How long have you been with the company?

A. Around eighteen years.

Q. How long have you been supervisor?

A. About eight months, I imagine.

Q. And before that time what was your position?

A. Stock clerk.

Q. In what department?

A. Brass mill.

Q. How long did you hold that position?

A. Around five years.

Q. Did you hold that position in 1937?

2061 A. Yes, sir.

Q. Now, as stock clerk were you foreman or supervisor over any one else?

A. No.

Q. Doing just clerical work in the stock room?

A. That is all.

Q. Mr. Jackson, did you have any connection with the organization of the Western Cartridge Employes Independent Union?

A. I did.

Q. When did you first hear of that proposed organization?

A. Well, Mr. Wilkerson asked me what I thought about it and I told him I thought it would be a good thing.

Q. Is that Mr. Ira Wilkerson?

A. That is right.

Q. What did he say to you about it and what did you say to him, do you recall the conversation?

A. Well, no, I can't recall just the words.

Q. Well, the substance of it.

A. He just asked me what I thought about an inside union and I told him I thought it would be a good thing, they should have an inside union.

Q. Why did you think it would be a good thing to have an inside union, Mr. Jackson?

A. Well, for various reasons. With an inside union
2062 you could get what you want, you know, like if you wanted a raise or something, have the union fight it out for you. There is a lot of good reasons.

Q. Why did you prefer an inside union to an outside union or affiliated union, C. I. O. or A. F. of L., tell us what was in your mind?

A. Well, for one reason the dues wasn't so high and I didn't think that we needed any man to come in there and tell us how to run our jobs, see, outside of our own men that is working in there.

Q. Now, after Ira Wilkerson talked to you about it did anyone else discuss it with you?

A. Well, he said they were going to have a meeting at Manning's.

Q. Francis Manning?

A. Francis Manning, at Wood River.

Q. A lawyer at Wood River?

A. That is right.

Q. And did you discuss this matter with anyone else before you attended the meeting there?

A. No, I didn't.

Q. You attended various meetings at Mr. Manning's office?

A. Well, not all of them.

Q. You attended some of them?

A. Some of them, sure.

2063 Q. Those were the meetings of the temporary committee?

A. That is right.

Q. Before you adopted your constitution and elected permanent officers, is that correct?

A. That is right.

Q. And after the election were you elected an officer?

A. No, I wasn't.

Q. And after that did you participate in any of the bargaining activities of this union?

A. No, I didn't.

Q. Were you ever elected an officer in the union, Mr. Jackson?

A. No, I wasn't.

Q. Did any foreman or supervisor or superintendent or official of the company ever say anything to you about joining the independent union?

A. No.

Q. Or about organizing it or relating to helping to organize it?

A. No.

Q. Either at that time in 1937, or at any time since then?

A. Not a soul.

Q. Did you solicit other men to join, other men or women to join the independent union?

A. Well, a few, yes, if I would see them out there.

2064 Q. Did any one on behalf of the company tell you to do that or urge you to do that?

A. No, sir.

Q. I think that's all.

Cross Examination.

Q. (By Mr. Evans) Were you ever a boss before?

A. No, sir.

Q. Supervisor?

A. No, sir.

Q. As stock clerk you get to see large numbers of the employes on the job?

A. No, we were out there—well, the stock room was off of the brass mill, see.

Q. Did you contact a large number of employes yourself as stock clerk?

A. No.

Q. What did you do as stock clerk?

A. Well, as stock clerk I take care of the books.

Q. You were in the office?

A. In the brass mill stock room, see.

Q. Is that part of the brass mill office?

A. No.

Q. Next to it?

A. No, on the opposite side of the building.

Q. Talk to anybody else but Wilkerson about join-
2065 ing the union?

A. No, not until we went up to Manning's.

Q. Did you carry cards around with you in the plant?

A. No.

Q. Did you sign a wage assignment?

A. Sure did.

Q. When did you do that?

A. In the earlier days when we first started.

Q. Where did you sign it?

A. I don't remember now where it was.

Q. Who gave it to you?

A. Let's see, I think it was Sullivan.

Q. (By Mr. McRoberts) Otis Sullivan?

A. Otis Sullivan.

Q. (By Mr. Evans) He was the secretary and treasurer?

A. That is right.

Q. Was that before or after Sullivan resigned his job with the company?

A. Before.

Q. You were opposed to the idea of an outsider as business agent or representative for the employes?

A. Come again on that, will you?

(Question read.)

A. Well, no.

Q. What was it you meant then when you said you
2066 didn't want anyone to come in and tell you how to run your job?

A. Well, I meant I didn't want any outsider to come in, and the men down there at the union, see, in other words, say, like my job was down, now on the outside union you would have to go home, see, and you could work any place in there that was open.

Q. Where did you get that idea?

A. That is what I heard.

Q. Who told you that?

A. I heard that all my life.

Q. Were you opposed to Sullivan acting as secretary and treasurer of the union when he was not an employe of the company?

A. I don't remember when he quit.

Q. You know he was secretary and treasurer after he quit?

A. Yes. Well, I wasn't in it then.

Q. You were a member, weren't you?

A. I was a member of it, yes, but I wasn't up to all the meetings.

Q. Did you—you didn't resign from the union?

A. No.

Q. When Sullivan so acted?

A. No, I didn't.

Q. Did you have any voice in picking Sullivan as the secretary and treasurer?

2067 A. No, I wasn't up there that night.

Q. Well, was there ever any meeting?

A. Oh, yes, there was, they had a meeting to elect their officers, sure.

Q. Was that a general meeting?

A. No.

Mr. McRoberts: The witness said he wasn't there, Mr. Examiner.

Trial Examiner Ruckel: Well, I don't think this is material.

Mr. Evans: He also testified about why he joined this organization, too, and a lot of indefinite things.

Mr. McRoberts: He can't testify what took place at a meeting when he wasn't present.

Mr. Evans: Well, his understanding, what he thought took place.

Q. (By Mr. Evans) You say he was not appointed at any mass meeting of the members?

Mr. McRoberts: Which you attended, Mr. Jackson.

Mr. Evans: I object to counsel injecting something.

Trial Examiner Ruckel: Objection sustained.

Mr. McRoberts: Which, my objection to the question or Mr. Evans' objection to me?

Trial Examiner Ruckel: There was an objection by you.

Mr. McRoberts: I was objecting. I object to Mr.
2068 Evans objecting to my objection. I didn't know which objection the Court sustained.

Trial Examiner Ruckel: I am sustaining the respondent's objection to the question.

Mr. Evans: Read the question.

(Question read.)

Trial Examiner Ruckel: Your objection?

Mr. McRoberts: I object to that unless the witness was present at the meeting and knows what took place.

A. I don't know.

Trial Examiner Ruckel: I don't see the relevancy of all this, anyway. It is not important to educate this man, if he needs it. I think it is irrelevant. What if he did misconceive the nature of an outside organization, as long as you can't trace the misconception to the respondent?

Mr. Evans: I don't see what the relevancy of the testimony is in the first place then. I think it is purely opinion evidence.

Trial Examiner Ruckel: His reasons, we can't argue about his reasons. They may be very ill-founded, as long

as they are not founded in some act or declaration of the company. That, I think is the criterion.

Mr. Evans: I move to strike the testimony of the witness as to his reasons for joining the union.

Trial Examiner Ruckel: Motion denied.

2069 Mr. Evans: And the testimony that followed that.

If I am prevented from cross examination, certainly the original statement which is more or less than opinion, should go out.

Trial Examiner Ruckel: Motion denied.

Mr. Evans: No further questions.

Mr. McRoberts: That's all.

Mr. McRoberts: Mr. Examiner, while we are waiting, and in connection with Respondent's Exhibit 25 and Independent Union's Exhibits Nos. 1 and 2, being the minute books of the independent union, there is, of course, only one copy of these exhibits available. I would like to ask leave to withdraw the original exhibits with the understanding that any party to the case who wishes to offer any portion of them in evidence, wishes to use or refer to any portion of that in connection with the case may substitute copies, photostatic copies or other copies of such portions as they may wish to use and refer to.

Mr. Evans: I object to that because it has already been stated that it is not limited to the testimony at the hearing, but may also be incorporated through arguments or briefs.

Mr. McRoberts: Yes.

Mr. Evans: Therefore, the documents would have to stay in the record.

2070 Mr. McRoberts: Well, my thought is that these are the union's only minutes, and any portion that any one wishes to refer to on argument or briefs should be supplied in the form of duplicate copies by the party wishing to refer to it.

Mr. Evans: How could an attorney in Washington going over the record know what he may want to insert unless the books are in the record?

Mr. McRoberts: For the moment then I will withdraw my motion.

Trial Examiner Ruckel: We will consider it later, gentlemen. I am not sure yet what I want to do myself.

ALVIN CANNEDY,

a witness called by and on behalf of the Intervenor, being first duly sworn, was examined and testified, as follows:

Direct Examination.

Q. (By Mr. McRoberts) Will you state your name, please?

A. Alvin Cannedy.

Q. Where do you live, Cannedy?

A. East Alton.

Q. Where are you employed?

A. Western Cartridge.

Q. How long have you been with the company?

A. Twenty years in July.

Q. What is your present position with the company?

2071 A. Mechanic.

Q. And in which department?

A. Metallic manufacture.

Q. What position did you have in 1937?

A. Mechanic.

Q. In the same department?

A. Yes, sir.

Q. Mr. Cannedy, were you connected with the organization of the Western Cartridge Employes Independent Union?

A. Well, I met with them the first meeting they had.

Q. When did you first hear of this proposed meeting?

A. Well, I don't know the date, but I was approached by Otis Sullivan, they was to have a meeting down at Wood River at Francis Manning's office.

Q. About how long before this meeting was it now that Sullivan approached you?

A. That day.

Q. And what did he tell you and what did you tell him?

A. Well, he told me he would like to have me down there, they were going to have a meeting and they was going to organize a union.

Q. Tell you what kind of union they were going to organize?

A. Well, I don't recall.

Q. Did he say anything about whether it was to be an

independent or affiliated union, or C. I. O. or A. F. of L. Union?

2072 A. Well, he didn't say. He said they was going to have a meeting.

Q. Meeting to form a union?

A. Yes.

Q. Anything further said by Sullivan at that time to you?

A. No, there wasn't.

Q. Did you later discuss it with any one else before attending the meeting?

A. Well, I don't know for sure whether I did. That has been quite awhile ago.

Q. You discussed it after the meeting and between meetings?

A. Yes, sir.

Q. You attended this meeting on June 4, 1937, at Mr. Manning's office, the first organization meeting?

A. That is the first meeting they had.

Q. And thereafter did you attend some or all of the remaining meetings prior to their permanent organization?

A. I think I attended all of them.

Q. And did you solicit other employes to join this proposed union?

A. Well, I mentioned the union. I took some membership cards to them.

Q. And was there a discussion at this meeting at Mr. Manning's office as to the kind of a union you were going to form?

2073 A. Yes, they decided on the name.

Q. And did they discuss the question of whether it was to be an independent or inside union or to be an affiliated union?

A. It was decided to make it an independent union. I think the name still stands the way it was organized.

Q. You didn't become an officer, permanent officer of the union, did you?

A. No, sir.

Q. After the election?

A. No, sir.

Q. And have you ever thereafter been an officer of the union?

A. Nothing, outside of committeeman.

Q. You have been a department committeeman in your department?

A. Yes.

Q. Been that for several terms?

A. I think two terms.

Q. Mr. Cannedy, did any foreman or supervisor or superintendent or official of the company say anything to you about organizing this union?

A. No, sir.

Q. Or about joining it?

A. No, sir.

2074 Q. Or about soliciting other people to join it?

A. They never said, no, or none of them mentioned it.

Q. Back in 1937 or at any time since then?

A. No, sir.

Q. Mr. Cannedy, what were the reasons that were in your mind that caused you to join this union and assist in organizing it?

Mr. Evans: Objection.

Trial Examiner Ruckel: He may answer.

Mr. Evans: If I am not allowed to cross examine on the thing I don't see why we should allow the question to go in.

Trial Examiner Ruckel: You may cross examine on that, but not such cross examination as to the reasonableness or validity of the reasons.

Mr. Evans: That is the only basis you can cross examine on.

Trial Examiner Ruckel: You might show by cross examination that he didn't have those reasons and had some others. As to whether they are good or bad we are not concerned with. You may answer.

A. Well, the employes had a right to organize and I think that was the idea of the group when they organized, they wanted to have a union.

Q. (By Mr. McRoberts) And was there any discussion as to the advantages or disadvantages of an inside

2075 union to an A. F. of L. or C. I. O. Union among the group?

Mr. Evans: Objection; leading.

Trial Examiner Ruckel: He may answer.

A. Well, they seemed to think that that would be the best union for the good of the employes.

Q. (By Mr. McRoberts) By that you mean the independent union would be the best?

A. Yes, sir.

Mr. Evans: Objection, move to strike, on the grounds it is leading.

Trial Examiner Ruckel: It may stand, but make the questions less leading hereafter, please.

Q. (By Mr. McRoberts) Was there any other reasons other than the ones you have told us that were in your mind and causing you to join the union, or to assist in organizing it?

A. No, I can't think of any.

Q. I think that's all.

Cross Examination.

Q. (By Mr. Evans) Was there any discussion at this first meeting in Manning's office as to affiliation with an outside union?

A. Well, I think that is in the by-laws that they had to have a certain percent of the membership voting on whether they wanted to join an outside union. If they ever wanted to go into an outside union they had to
2076 have a certain percentage of the membership vote that way.

Q. Was there any discussion at this first meeting as to affiliation with an outside union to begin with?

A. No, sir, not that I heard of.

Q. Was there any discussions at any of the meetings prior to the adoption of the constitution as to affiliation with an outside union?

A. You mean instead of organizing independent, they would go in an outside union?

Q. Yes.

A. No, there wasn't.

Q. Anybody raise the point?

A. What do you mean?

Q. Did anybody in your meetings ask whether or not that should be done?

A. I don't remember anything like that.

Q. That's all.

FRANK SWEENY,

a witness called by and on behalf of the Intervenor, being first duly sworn, was examined and testified, as follows:

Direct Examination.

Q. (By Mr. McRoberts) Will you state your name, please?

A. Frank Sweeny.

Q. Where do you live, Mr. Sweeny?

2077 A. 3410 Gilham Avenue, Alton.

Q. Where are you employed?

A. Western Cartridge Company.

Q. How long have you been with that company?

A. Well, a little over seven years, I guess.

Q. What is your position with the company?

A. Well, at the present time I am repair foreman in the brass mill machine shop.

Q. Shift foreman?

A. Yes, sir.

Q. In the brass mill?

A. Brass mill repair.

Q. How long have you been foreman, Mr. Sweeny, approximately?

A. Four years in September, the first of September.

Q. That would go back to, was it September of 1937 you became a foreman, or 1938?

A. Well, let's see, this is—

Q. 1942.

A. 1942. 1941, four years back.

Q. Is it four years this coming September?

A. No, it has been four years past, I think.

Q. Mr. Sweeny, if you will, look at your employment card here and see if that will refresh your recollection?

A. Maybe it is just three years back.

2078 Q. When you became shift foreman, is that on 8-1-38?

A. 1938, is right.

Q. Before that time what had been your position?

A. I was employed as a machinist.

Q. Repair man?

A. It has been three years.

Q. Three years last September?

A. Three years last September.

Mr. Evans: August 1st, wasn't it?

Trial Examiner Ruckel: August 1st, yes.

Q. (By Mr. McRoberts) August 1st instead of September 1st.

A. I was thinking about September.

Q. In any event in 1937 you were repair man and machinist?

A. Yes, sir.

Q. Mr. Sweeny, did you participate in the formation of the Western Cartridge Employes Independent Union?

A. Well, I was there when they organized, began to.

Trial Examiner Ruckel: Where?

Q. (By Mr. McRoberts) You attended the temporary meetings at Mr. Manning's office in Wood River?

A. I did.

Q. Who first spoke to you about this independent union?

A. Well, I couldn't say exactly.

Q. Did several people talk with you about it, about the same time?

2079 A. I had heard right smart about it.

Q. Do you remember who some of those were that talked to you about it before you attended a meeting?

A. Well, I don't know that I could say exactly, but they were the first ones.

Q. Do you remember any of the men that talked with you?

A. Oh, yes, I talked with quite a few out there. There was Howard Tueth and Mr. Ferguson.

Q. Is that Leo Ferguson?

A. I believe his name was Leo. Yes, I think that is his name.

Q. Did any foreman or supervisor or superintendent or official of the company tell you to join this union?

A. No, sir.

Q. Or say anything about your organizing this union?

A. No, sir.

Q. Back in 1937, or at any time since then?

A. No.

Q. Mr. Sweeny, were you elected an officer of the union?

A. No, I don't think I was.

Q. Did you ever become one of the committeemen?
A. I was committeeman in our department, but—
Q. That is the only office you have ever held?
A. Yes.
Q. And you haven't participated in any bargaining
2080 with the company except as a committeeman?
A. That is all.
Q. On grieveances in your department?
A. I don't think I ever had a grievance, no, sir.
Q. You don't think you ever had a grievance?
A. No. I was made foreman right away after this.
Q. After you became foreman did you then cease to be a member of this union?
A. Yes, sir.
Q. Mr. Sweeny, what were the reasons that impelled you to join this union and to assist in organizing it?
Mr. Evans: Objection, incompetent, irrelevant and immaterial.
Trial Examiner Ruckel: He may answer. You may answer.
A. Well, one thing was I thought we could have better working conditions. That is about the only thing I can say.
Q. (By Mr. McRoberts) Did you have any views as to the desirability of an independent or inside union as compared with an outside or affiliated union?
Mr. Evans: Objection, incompetent and irrelevant.
Trial Examiner Ruckel: He may answer.
A. Well, I don't know that I did. I just figured if we could have some kind of an organization that we could have better working conditions.
2081 Mr. McRoberts: I think that's all.

Cross Examination.

Q. (By Mr. Evans) Had you ever bossed before 1937?
A. No, sir.
Q. You say you worked for the company about seven years?
A. I think I have been here, at this time, about seven years.
Q. Did you solicit others to join the independent?
A. No, sir.

Q. You never got any others to join?

A. No, sir.

Q. Did you attend these meetings at Manning's office, or just the first one?

A. I attended, I think, two meetings at Manning's office.

Q. Is that all you did in the formation of this organization?

A. That is all.

Q. Was there any discussion in those meetings at Manning's office about the individual contracts?

A. I couldn't say.

Q. Did Sullivan report anything about the individual contracts at any of those meetings?

A. If he did I don't remember it.

Mr. Evans: That's all.

2082 Mr. Evans: I move to strike the testimony of the witness as being of no materiality. The mere fact that he attended a couple of the meetings doesn't show that he was an organizer or originator of the organization. He did no solicitation whatever. I don't see that this testimony is of any value.

Trial Examiner Ruckel: It may stand.

CLYDE R. MITCHELL

being called as a witness by and on behalf of Intervenor, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. McRoberts) State your name, please?

A. Clyde R. Mitchell.

Q. Where do you live, Mr. Mitchell?

A. 2213 Locust Street, Alton, Illinois.

Q. Where are you employed?

A. Western Cartridge.

Q. How long have you been employed by the company?

A. Thirteen years last March, 1928.

Q. What is your position with the company?

A. Well, I am a sub-foreman in the shipping department.

Q. How long have you been sub-foreman?

A. For the past two years.

Q. In 1937 what was your position, Mr. Mitchell?

2083 A. Well, I was what they call a checker, order checker.

Q. Order checker. Were you supervisor, did you have any men working under you or just clerical work?

A. I was just a clerk, that is what I was, checking orders.

Q. Mr. Mitchell, did you have any connection with the formation of the Western Cartridge Employes Independent Union?

A. I was elected as representative of Division 4, over my opponent, Fred Grissom.

Q. Was that at the first election of the union in 1937?

A. Well, I don't remember. I wasn't in on the ground floor.

Q. Did you attend any of these meetings at Mr. Manning's office before they had their permanent organization?

A. No, it was a permanent organization when they elected me as representative.

Q. When did you join the union, Mr. Mitchell?

Trial Examiner Ruckel: The Independent?

Q. (By Mr. McRoberts) The Independent Union?

A. Just about a year after it was organized, I don't remember just the exact date.

Q. And who solicited you to join?

Mr. Evans: Objection, immaterial.

Trial Examiner Ruckel: He may answer.

A. I don't exactly remember.

Q. (By Mr. McRoberts) Was it one of the employes?

A. Yes.

2084 Q. One of the members of the union?

A. Seems to me like it was. I remember Charlie Taylor talking to me about it and I told him first I didn't want anything to do with it, and I don't remember whether somebody else talked to me about it. Of course, they were all discussing it, you know, at that time.

Q. Did any foreman or supervisor or superintendent or official of the company ever ask you to join this union?

A. I am pretty sure they didn't, no.

Q. At that time or any time since then?

A. No, sir.

Q. After you were elected representative of your division, did any foreman or superintendent or supervisory employe or official of the company ever tell you how to conduct the affairs of the union?

A. No, not even my immediate foreman, because he didn't seem to know what my status was, he didn't know who was running it, whether he or I was.

Q. Mr. Mitchell, you said at first you didn't want to join the union and then a year later you did join. Will you tell us why you didn't want to join at first and why you joined later on?

Mr. Evans: Objection, incompetent and immaterial.

Trial Examiner Ruckel: Objection sustained.

A. It is all right.

2085 Trial Examiner Ruckel: No. Objection sustained.

Q. (By Mr. McRoberts) Will you state, Mr. Mitchell, why you joined the union when you did, the Independent Union?

Mr. Evans: Objection.

Trial Examiner Ruckel: Objection sustained.

Q. (By Mr. McRoberts) Will you state the reasons which impelled you, which you had in your mind, which influenced you in joining this Independent Union?

Mr. Evans: Objection, immaterial.

Trial Examiner Ruckel: Objection sustained.

Q. (By Mr. McRoberts) Will you explain how and why you came to join the union, come thereafter to join this Independent Union?

Mr. Evans: Objection.

Trial Examiner Ruckel: Objection sustained.

Mr. Evans: Counsel asks the same question.

Mr. McRoberts: Mr. Examiner, I offer to prove by this witness that if permitted to answer he would testify that he joined the Independent Union of his own control and accord, that he was not influenced directly or indirectly by any act or statement on the part of the company or any one representing the company.

Trial Examiner Ruckel: You may ask him if any supervisory employe of the company—

Mr. McRoberts: I have asked him that question. He

2086 said none of them did.

Trial Examiner Ruckel: I think that is proper.

Mr. McRoberts: That he joined this union because he felt that by doing so he would benefit himself and the other employes of the plant; that his purpose was to work for better wages, hours and working conditions and to assist in bargaining collectively with the employer in the manner provided by law, and that he joined the Independent Union because he preferred for reasons of his own to join such a union in preference to an affiliated union or any union affiliated with the American Federation of Labor or the C. I. O. Under your practice is it necessary to have an objection to the offer of proof?

Mr. Evans: Counsel, have you talked with the witness and know that he would so testify?

Mr. McRoberts: I have never seen the witness before he was placed on the witness stand.

Mr. Evans: I don't think the offer is proper, I don't think it is based on counsel's knowledge that the witness will so testify.

Mr. McRoberts: Let the witness testify and find out what he will testify to. That is what I offer to prove by the witness.

Trial Examiner Ruckel: There is an objection to the offer as it now stands, is there not?

2087 Mr. Evans: Yes.

Trial Examiner Ruckel: Objection sustained.

Mr. McRoberts: That's all, Mr. Mitchell.

Cross Examination.

Q. (By Mr. Evans) Were you a boss before 1937?

A. No.

Q. Supervisor of any kind?

A. No, not at all.

Q. Always worked in the shipping department?

A. That is right.

Q. And you have been sub-foreman now for about two years?

A. That is right.

Q. How many employes do you have supervision over?

A. It ranges from ten to fourteen.

Q. Maybe I misunderstood you, but on direct examination I thought you made some kind of a statement that after you were elected representative, it didn't seem to be

clear who was running it, you or the foreman. Will you explain that to me, tell us what was said?

A. He let me strictly alone in selecting the boys for union membership, and my time and what I would do, he didn't seem to know where I stood with him. He didn't know what he could tell me to do or what he couldn't, and I never did discuss it with him and he didn't with me, I just let it stand that way because it gave me more
2088 freedom that way. As far as I know, he never asked anybody. Nothing was said exactly.

Q. (By Trial Examiner Ruckel) About what was nothing said?

A. I was pretty much my own boss.

Q. (By Mr. Evans) You went about on company time and property to conduct such affairs of the union as you thought were necessary?

A. Yes, although I always took care of my checking job, I always done my work first.

Q. That's all.

Redirect Examination.

Q. (By Mr. McRoberts) Which department of the union were you working in?

A. The 4th Division; Division 4.

Q. Mr. Mitchell, to refresh your recollection I am going to show you Respondent's Exhibit No. 25, which has been identified as the minutes of the Independent Union. I am going to call your attention to the minutes of the meeting of July 17, 1937, which seems to show the results of elections in various divisions, calling your attention down to for representative of Division 4, it shows Fred Grissom and Clyde Mitchell?

A. That is right.

Q. Shows that you received 72 votes to his 63?

A. That is right.

2089 Q. Is that the year and time at which you were elected representative?

A. If that is an exact copy of the minutes, it must be. I couldn't verify that because I don't remember the date. I have papers at home that I could look it up.

Q. In any event there was just that one election between you and Fred Grissom, is that correct?

A. That is right.

Q. And were you one of the representatives who signed on August 12th, the basic agreement between the company and the Independent Union?

A. That is right. I have a copy of that myself.

Q. You have a copy of this basic agreement yourself?

A. Yes, sir.

Q. And that is August 12, 1937?

A. That is right.

Q. (By Trial Examiner Ruckel) But you were not one of those who initially formed the organization, is that correct?

A. No, I wasn't one of those.

Mr. McRoberts: That's all.

Trial Examiner Ruckel: We will recess for five minutes.

(Five minute recess)

Trial Examiner Ruckel: Call the next witness.

2090 ARNOLD D. LINDSEY,

a witness called by and on behalf of the Intervenor, being first duly sworn, was examined and testified, as follows:

Direct Examination.

Q. (By Mr. McRoberts) State your name, please?

A. Arnold D. Lindsey.

Q. Where do you live, Mr. Lindsey?

A. Rosewood Heights.

Q. Where are you employed?

A. Western Cartridge.

Q. How long have you been with the company?

A. About fifteen years and four months.

Q. What is your position with the company?

A. Machinist.

Q. What kind of work did you do in 1937?

A. Operate a lathe—1937?

Q. Yes.

A. I believe I was just a repairman there in 1937.

Q. You were a repairman in 1937?

A. Yes, sir.

Q. Mr. Lindsey, did you have any connection with the organization of the Western Cartridge Employes Independent Union?

A. Well, I was there when we started to organize the union, yes, sir.

2091 Q. Who first spoke to you about it?

A. Well, I couldn't tell you exactly who did.

Q. Some of the men in the shop?

A. I think so, yes, sir.

Q. Was this before you attended one of these meetings at Manning's office?

A. How is that?

Q. Did you attend any of the meetings at Francis Manning's office in Wood River?

A. Just one.

Q. Do you remember who invited you to attend?

A. No, sir, I don't.

Q. Did any foreman or supervisor, or company official tell you to attend that meeting?

A. No, sir.

Q. Or to join the union?

A. Yes, sir.

Q. You joined the union?

A. Yes.

Q. But did any foreman or supervisor tell you to join?

A. No, sir.

Q. At that time or any other time?

A. No, sir.

Q. Did you become an officer in the union?

A. How is that?

2092 Q. Did you become an officer in the union?

A. No, sir.

Q. (By Trial Examiner Ruckel) What was the date of the meeting you attended in Manning's office?

A. I couldn't tell you exactly the date.

Q. Was it the first meeting, or do you know?

A. I think so, yes, sir, I am pretty sure that it was.

Q. That is where the formation of the union was discussed?

A. Well, they had no by-laws or anything like that, we just met there and they talked it over.

Q. Forming the union?

A. The forming of the union. The way I understood it they left it up to Mr. Manning then to draw it up, that is all I know.

Q. (By Mr. McRoberts) What was the talk about the forming of this union, as to why it should be formed?

A. Well, I really couldn't tell you.

Q. Was there any talk about other unions, A. F. of L. or C. I. O. unions?

A. Well, not at the time, no, sir, not that I know of.

Q. I think that's all.

Mr. Evans: No questions.

CONRAD BARKLEY,

a witness called by and on behalf of the Intervenor,
2093 being first duly sworn, was examined and testified, as follows:

Direct Examination.

Q. (By Mr. McRoberts) Will you state your name, please?

A. Conrad Barkley.

Q. Where do you live, Mr. Barkley?

A. 3603 Coronado Drive, Alton, Illinois.

Q. Where are you employed?

A. Western Cartridge.

Q. How long have you been with the company?

A. Well, about eighteen years and six months, I think. I will be there nineteen years this coming June.

Q. What kind of work do you do there?

A. At present I am a foreman.

Q. What department?

A. Metallic manufacture.

Q. How long have you been foreman?

A. Since the latter part of last May.

Q. Since the latter part of May, 1941, or 1940?

A. 1941.

Q. Before that time what was your job?

A. I was an adjuster on machines.

Q. Did you do that kind of work in 1937?

A. Yes.

Q. Did you have anything to do with the formation of the Western Cartridge Employes Independent Union?

2094 A. Well, I wasn't at the starting of it, no.

Q. You weren't one of the group that attended the special meetings at Mr. Manning's office, is that correct?

A. No.

Q. Did you join in 1937?

A. I couldn't tell you exactly what year it was that I did join the union.

Q. Well, did you join the union the year that it was formed and become a member of its first executive board?

A. Yes, the same year.

Q. And you were one of the men who signed the basic agreement on August 12, 1937, were you not, between the company and the Independent Union?

A. Yes.

Q. You signed as representative of Division No. 3, is that correct?

A. That is correct.

Q. And did you later become a vice-chairman of the union in 1939, I believe?

A. After the first year I was in office, yes, chairman or vice-chairman.

Q. Were you vice-chairman, Clarence Nelson was chairman and then did you succeed him as chairman when he resigned, is that the way it was?

A. That is the way it was.

2095 Q. And as one of the representatives and as vice-chairman and later chairman, did you participate in collective bargaining negotiations with the representatives of the company?

A. Yes, sir.

Q. Mr. Barkley, who solicited you to join the Independent Union, do you remember?

A. I don't remember who it was.

Q. Was it any foreman or supervisor or superintendent or official of the company?

A. No.

Q. Has any foreman or supervisor or superintendent or official of the company ever solicited you to join this union?

A. No, sir.

Q. Has any such representative of the company ever advised you or instructed you or given you any requests or instructions about what you were to do as representative and officer of this union?

A. No, sir, they didn't.

Q. In acting as representative and vice-chairman and later chairman of this union, did you follow any instructions or directions or requests from the company in any respect?

A. No.

Q. For whom were you acting and representing in those negotiations to the best of your ability?

Q. (By Mr. Evans) Had you finished your previous answer?

2096 A. Yes, sir. Repeat that question, will you?

Trial Examiner Ruckel: Read it.

(Question read)

A. I was representing the union.

Q. (By Mr. McRoberts) And the members of the union?

A. Yes.

Q. Did you do that to the best of your ability?

Mr. Evans: Oh, I object to that.

A. Yes, sir.

Trial Examiner Ruckel: Objection sustained.

Mr. Evans: Move to strike it.

Trial Examiner Ruckel: It may be stricken.

Q. (By Mr. McRoberts) While you were a representative and officer of this union, did the company ever give to the union any financial support that you know of?

A. No, they didn't.

Q. Or did they ever give to the union anything except those matters which were negotiated through the bargaining between the union and the company?

Mr. Evans: I object to the form of that question.

Trial Examiner Ruckel: Objection sustained.

Q. (By Mr. McRoberts) Where did the union get the money to carry on the union affairs and pay its bills with?

A. Through membership dues.

Q. In addition did they give boat excursions and

2097 dances, things of that sort to raise money?

A. They did, and the receipts from those different entertainments paid for the expenses. Then we had a recreation or entertaining fund, that we had set aside for such purposes.

Q. None of the money or the funds came from the company?

A. No.

Q. I think that's all.

Cross Examination.

Q. (By Mr. Evans) How do you know none of the funds came from the company?

A. The secretary and treasurer took care of it, and the amount of dues came in, there was a report given out every meeting how much was collected on dues.

Q. All you know is what the secretary and treasurer told you?

A. And what our expenses were.

Q. All you know is what the secretary and treasurer told you, you didn't have anything to do with the books yourself, did you?

A. No. The books were open there any time a representative wanted to look at them, or any member.

Q. You don't know whether the company ever gave any financial support to this union or not, do you, of your own knowledge?

2098 A. So far as of my own knowledge, no.

Q. (By Mr. McRoberts) As far as your own knowledge no what?

A. They never gave no financial support.

Q. (By Mr. Evans) Were you ever a foreman before 1937?

A. No, sir.

Q. Were you present at the meeting at the company cafeteria when the basic agreement was passed on and signed?

A. I was.

Q. Who talked at that meeting?

A. Well, there was our attorney at that time, Mr. Manning, and the representatives and committeemen of the union.

Q. Who was it called in the committeemen?

A. As far as I know, I don't know definitely, but it was ordered by the chairman of the executive board.

Q. Who was that?

A. I think that was Mr. Plumb, at the time, the first year.

Q. And who talked at that meeting?

A. Why, Mr. Olin, John Olin, and then their attorney, Williams, I think.

Q. Had you ever seen this basic agreement before that day?

A. Oh, yes.

Q. When?

A. Oh, several times before. They gave us a copy of it to look it over.

2099 Q. (By Trial Examiner Ruckel) Who do you mean by they?

A. The company.

Q. (By Mr. Evans) They gave you a copy of it, did they?

A. We had one.

Q. Do you know where it came from?

A. From the company.

Q. How do you know that?

A. Well, I am not positive of it.

Q. And was that the same document that you signed at the meeting in the company cafeteria, or were there any changes in it?

A. No, there was some changes made in it.

Q. Were those changes suggested by the company?

A. I can't remember that far back, that is quite a few years ago for me, whether it was on our suggestion, or whether it was on their part.

Q. Do you remember what the suggested changes were?

A. Those matters pertaining to the basic agreement was voted on by the executive board, and how I voted I don't recall.

Q. My question was, what were the suggested changes that you refer to in your basic agreement?

A. I don't know. There was one of them there, I forget now what it is, I haven't saw that basic agreement for sometime.

2100 Q. What did Mr. Olin say at that meeting?

A. Well, I don't know. That is quite a few years ago for me to recall just exactly to put it in words what he said. I wouldn't make a statement like that because I don't know.

Q. What did Senator Williams say at that meeting?

A. I answered that question once, I think, with Mr. Olin. I don't know what he said. You couldn't expect me to answer what Mr. Williams said.

Trial Examiner Ruckel: Just say you don't know then.

Q. (By Mr. Evans) How did you become a representative?

A. Elected.

Q. And was there a petition passed around for your nomination prior to that?

A. There was.

Q. And in what department or division was that?

A. Well, the division of No. 3, included metallic manufacture and metallic anneal, cap manufacture, metallic tank, metallic loading, bullet mold.

Q. Did your petition for nomination pass around in the shop?

A. Yes, sir.

Q. And did you solicit membership in this organization?

A. I did.

Q. Did you do that in the shop?

A. Not during working hours, no.

2101 Q. Was it during working hours that other employes were solicited?

A. During lunch time.

Q. Did you have the same lunch time as all other employes?

A. At that time.

Q. You held office then for a two-year period, isn't that correct?

A. That is right.

Q. And then at the end of two years what happened?

A. I was out of office, I didn't re-run for re-election.

Q. You had been chairman before the end of the two year period was up?

A. I was chairman the last year of my term of the two years.

Q. That's all.

Redirect Examination.

Q. (By Mr. McRoberts) Mr. Barkley, when you became a foreman did you resign from the union?

A. No, sir.

Q. Are you still a member of the union?

A. Yes, sir.

Q. (By Trial Examiner Ruckel) Your answer was yes to the question, are you still a member?

A. Yes, sir.

Q. (By Mr. McRoberts) When did you become foreman?

2102 A. Latter part of last May, 1941.

Q. Have you attended any meetings of the union since you became foreman, Mr. Barkley?

A. No, I haven't.

Q. Foremen were not admitted to membership in 1937, were they?

A. No, according to the best of my knowledge, according to the constitution of the union I don't think it safe that a foreman or supervisor is allowed to be a member of the union.

Q. You have simply never resigned since you became a foreman?

A. No. Really, I never had time to since then to get down there and take care of it, and the union never made no mention to me about being foreman or said anything to me about it.

Q. You haven't participated in any of the affairs of the union since you became a foreman, have you?

A. No, I haven't.

Q. Mr. Barkley, will you state the reasons which influenced you, impelled you in joining this Independent Union?

Mr. Evans: Objection, incompetent, irrelevant and immaterial.

Trial Examiner Ruckel: Objection sustained. You didn't participate in the original formation of the union,

2103 did you?

A. No, I didn't.

Mr. McRoberts: I make the same offer of proof with respect to this witness, Mr. Examiner.

Trial Examiner Ruckel: Similar to that made in the case of Lindsay or in the case of Mitchell?

Mr. McRoberts: Yes.

Trial Examiner Ruckel: Same ruling, objection sustained.

Q. (By Mr. McRoberts) Possibly this has been answered. Mr. Barkley, during the entire time that you were in office, either as representative or as vice-chairman or chairman, to your knowledge did any one on behalf of the

company participate in any way in the carrying on of the union's affairs, except bargaining with them?

A. State that a little clearer.

Q. Well, let me rephrase it. During this time when you were representative, vice-chairman and chairman, did any foreman, supervisor, superintendent or official of the company take any part in running the business affairs of the Independent Union?

A. To my knowledge, no.

Q. Did they have any dealings with the Independent Union that you know of except the bargaining about wages, hours, conditions of employment, matters of that sort?

A. No, sir.

2104 Q. That's all.

Recross Examination.

Q. (By Mr. Evans) Do you have a wage assignment for dues outstanding?

A. I have.

Q. You are still paying dues to the Independent Union?

A. Yes, sir.

Q. That is all—approximately how many employes are there under your supervision?

A. Well, let's see. It won't be a correct answer, just approximately.

Q. That is all right.

A. About four hundred people, I imagine; something like that.

Q. That's all.

Redirect Examination.

Q. (By Mr. McRoberts) Mr. Barkley, in what way are you a foreman, how do you act as foreman? Over what department, what type of work?

A. Why, I take care of, look over everything in the department outside—now, there is metallic inspection, that is in the same building, which I don't have anything to do with, but I take care of every bit of operations outside of draw press operations.

Q. (By Trial Examiner Ruckel) You take care of what?

2105 A. Overseer on the floor, more of a floor foreman, supervisor.

Q. (By Mr. McRoberts) You are floor foreman, is that what you are called?

A. Yes.

Q. Over the operations of the metallic department?

A. Yes.

Q. And you are under whom?

A. Well, I work under Mr. Bennett, the head foreman.

Q. Mr. Bennett is head foreman?

A. Yes.

Q. You are sub-foreman under Mr. Bennett?

A. Sub-foreman.

Q. That's all.

Recross Examination.

Q. (By Mr. Evans) Does Melvin Taylor work in and around your department?

A. Melvin Taylor?

Q. Yes.

A. Melvin or Charlie?

Q. Melvin?

A. I don't know the man.

Q. That's all.

Mr. McRoberts: That's all.

2106 WILLIE C. HOLDER,

a witness called by and on behalf of the Intervenor, being first duly sworn, was examined and testified, as follows:

Direct Examination.

Q. (By Mr. McRoberts) Will you state your name, please?

A. Willie C. Holder, is the way I sign my name.

Q. What is your first name?

A. Willie, W-i-l-l-i-e.

Q. Where do you live, Mr. Holder?

A. 147 Lincoln, East Alton.

Q. Where are you employed?

A. Western.

Q. How long have you been with the Western Cartridge Company?

A. I think about nine months the last time.

Q. Have you been employed by them before then?

A. Yes, sir.

Q. When was it you were employed before that, approximately?

A. I served about nine years there.

Q. And that was nine years from what time to what time, about?

A. Well, I was away four and a half years.

Q. That was four and a half years between your first employment and this last employment?

2107 A. Yes.

Q. You were not employed by the company during 1937?

A. No.

Q. When you came back to the company this last time you were employed, did you join the Western Cartridge Employes Independent Union?

A. Yes.

Q. (By Trial Examiner Ruckel) When was that, now?

A. It must have been about three weeks after I went back.

Q. When was that?

A. Last part of March.

Q. What year?

A. 1941.

Q. (By Mr. McRoberts) So you joined the latter part of March, 1941, is that correct?

A. That is the best I remember.

Q. Mr. Holder, had you had any experience with other unions before that time?

Mr. Evans: Objection, immaterial.

Trial Examiner Ruckel: Objection sustained.

Q. (By Mr. McRoberts) Had you been a member of the American Federation of Labor Union for a number of years before you came back to work for the Western Cartridge Company?

Mr. Evans: I object to that as wholly immaterial, the objection having been sustained and counsel inserts

2108 a leading question in the record.

Trial Examiner Ruckel: Objection sustained.

Mr. McRoberts: I offer to prove by this witness that

he has been an employe of the American Federation of Labor Union.

Trial Examiner Ruckel: Member.

Mr. McRoberts: Member of the American Federation of Labor Union for a number of years before he returned to work for the Western Cartridge Company in the spring of 1941.

Trial Examiner Ruckel: Objection sustained to the offer of proof.

Q. (By Mr. McRoberts) Mr. Holder, will you state first who asked you to join the Independent Union?

A. Well, I wasn't asked to join, I joined down here in this little office they have here.

Q. Across the street?

A. That is right.

Q. Did any foreman, supervisor, superintendent or official of the company then or at any time tell you to join this union?

A. No.

Q. Or suggest to you that you join it?

A. No, there was none.

Q. Or discussed with you the question whether you had joined or should join?

2109 A. No.

Q. Either at the time last spring, or at any time since then, up to date?

A. No, they didn't say anything to me.

Q. Since joining this union have you remained a member in good standing?

A. Yes.

Q. Mr. Holder, will you state the reasons why you joined the Western Cartridge Employes Independent Union?

Mr. Evans: Objection, incompetent.

Trial Examiner Ruckel: Sustained.

Mr. McRoberts: What was the ruling?

Trial Examiner Ruckel: Sustained.

Mr. McRoberts: Now, I make a similar offer of proof with respect to this witness that was made with respect to Barkley and Clyde Mitchell, and in addition to the general offer of proof, offer to prove specifically by this witness that one of the reasons for his joining the Inde-

pendent Union was his experiences as a member of an American Federation of Labor Union, and I offer to show what those experiences were.

Trial Examiner Ruckel: The Trial Examiner will sustain the objection to the offer.

Mr. McRoberts: That's all.

Cross Examination.

(Q. (By Mr. Evans) With whom did you talk when
2110 you were hired in March, 1941?

A. With whom did I what?

Q. With whom did you talk, who hired you?

A. I don't remember the employment man.

Q. Were you interviewed in the employment office?

A. Yes, and they called for me to come back. Mr. Bennett called for me.

Q. Did you talk to Mr. Bennett when you were in the employment office?

A. No.

Q. Were you informed in the employment office that there was a union in the shop?

A. No.

Q. Were you questioned as to any affiliation or experiences with unions?

A. No, I was not.

Q. When did you first tell anybody at the Western Cartridge Company about your experiences with a union?

Mr. McRoberts: Mr. Examiner, an objection has been sustained to letting us prove about union experiences.

Trial Examiner Ruckel: What was the question?

Mr. McRoberts: I submit when I am not permitted to go into it on direct, it should not be a subject of cross examination.

Trial Examiner Ruckel: You weren't permitted to
2111 go into the—the witness wasn't permitted to answer whether or not he had been a member.

Mr. McRoberts: The question is, when did you first tell somebody that you were a member.

Trial Examiner Ruckel: Objection sustained.

Q. (By Mr. Evans) Did you have any discussion with any boss or foreman about any union at all at any time?

A. No boss or foreman, no.

Q. Anybody at the company at all?

A. Not with an inside union. I had little discussions on other unions inside there.

Q. In the presence of any foreman or boss?

A. No.

Q. Do you have a wage assignment outstanding as to deductions for dues to the Independent?

A. I do.

Q. Where did you sign that?

A. Right down here in this little office across the street.

Q. (By Mr. McRoberts) That is the office of the Indepent Union?

A. That is right.

Q. (By Mr. Evans) What do you do at the plant?

A. I investigate tools right at the present time, the condition of them and mechanism of them.

Q. What was that last?

2112 A. The mechanism of tools, the way they are made, first one thing and then another, different changes to be made on them.

Q. What do you mean when you say investigate?

A. If they are having too much breakage somewhere on the job I go out and try to prevent some of it.

Q. When you say you go out you mean you go out to a different department awhile?

A. I go out on this particular job, yes, in this building where I work.

Q. To whom do you report such instances?

A. My foreman.

Q. Do you report to anyone else?

A. No.

Q. That's all.

Trial Examiner Ruckel: Any further questions?

Redirect Examination.

Q. (By Mr. McRoberts) Mr. Holder, are you a machinist there?

A. No.

Q. Tool machinist?

A. I just trace the tool troubles between the metallic department and the machine shop.

Q. Are you a foreman or supervisor?

A. No.

Q. That's all.

2113 Mr. McRoberts: Mr. Examiner, in view of the ruling made on objection to the testimony of this witness and to the preceding witnesses Barkley and Mitchell, I question whether I should bring in the other employes who are now lined up ready to testify and others who can be prepared to testify on short notice. We are prepared to offer on behalf of the Independent Union testimony of substantially every member to the general effect of the offer of proof made in connection with the witnesses Holder, Barkley and Mitchell, excepting, of course, the specific experience with other A. F. of L. Unions in the case of Mr. Holder, and I am prepared to bring in such witnesses and make formal offers of proof in the case of each single witness if the Examiner will permit me to do so.

Mr. Evans: Mr. Examiner, I don't believe the offer of proof is made upon the basis of any knowledge by counsel that such facts are true. I don't believe that he interviewed any of such persons, or if he has, they are relatively small.

Mr. McRoberts: I haven't interviewed a single one of these witnesses at all, I make my statement on the basis of the parties who have interviewed them, Mr. Chapman and other officials of the union, their statements as to what they can produce in the way of testimony by additional members. They were not asked to interview every
2114 member of the union until we first found out whether the Examiner would permit the testimony. We do have some forty or fifty members of the union who have been interviewed by other union members and who are prepared, whose names we have, and who are prepared to testify, and we are prepared to produce them. We are prepared to produce as many more members of the union as the Examiner will permit us to produce.

Mr. Evans: Mr. Examiner, the entire offer is wholly immaterial even if we assume that counsel's testimony would follow out his offer, which I don't think it would, it would not cover nearly any majority of the employes, and the company has executed a contract recognizing this union as the exclusive bargaining agent at a time when it did not represent a majority. That contract has been used as a basis for a bar to any determination by any other union as bargaining agent, and that such support and use of this

organization would not be disproved by bringing in the persons that counsel mentions.

Mr. McRoberts: I would like to amend my offer of proof by stating specifically that if permitted to do so I will produce in that way more than a majority of the maintenance and production employes of the company at the East Alton plant.

Trial Examiner Ruckel: The Trial Examiner would sustain objections to similar questions if put to these
2115 other employes, no matter how many there were. I have tried to draw the line between reasons in the minds of the actual organizers of the union and reasons why subsequently other people joined the union. There are innumerable things during their employment that condition their attitude toward this or any other union, and as to reasons now why they joined the union, I don't think they are material. It certainly would be highly cumulative and put an impossible burden upon the Trial Examiner and the Board here to ask two thousand or possibly more witnesses.

Mr. McRoberts: So that there may be no mistake about the nature of this offer of proof and what is included in that, I offer to prove by each of these witnesses to whom I refer, in addition to what I have already stated, specifically, that no foreman, supervisor, superintendent, official or other representative of the company at any time asked, suggested, or urged them to join the Independent Union, or attempted in any way to direct, control, or affect their actions as members of the Independent Union.

Trial Examiner Ruckel: Well, I had that in mind when I made my ruling, too. It was based solely upon the question, why do you belong to the union. Do you have any other witnesses? Off the record.

(Discussion off the record.)

Trial Examiner Ruckel: We will adjourn now. The
2116 hearing will be recessed until 10:00 o'clock tomorrow morning.

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2120 MANUEL WISEMAN,

called as a witness, by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. McRoberts) State your name, please.
A. Manuel Wiseman.
Q. Where do you live, Mr. Wiseman?
A. Alton, Illinois.
Q. What is your profession?
A. Attorney at law.
Q. With offices in Alton?
A. Yes.
Q. How long have you practiced law, Mr. Wiseman?
A. Over thirteen years, past.
Q. Mr. Wiseman, did you represent the Western Cartridge Employes Independent Union?
A. I did.
Q. For what period?
A. From June 1, 1939, to June 1, 1941.
Q. Who arranged for your employment, do you know?

A. Members of the Executive Board of the Western
2121 Cartridge Employes Independent Union.

Q. Did you at that time, or before or since, have any connection with the Western Cartridge Company?
A. No sir.
Q. Did the Western Cartridge Company pay you, directly or indirectly, anything for your services in connection with the Independent Union?
A. No sir.
Q. Did the Western Cartridge Company in any way, directly or indirectly, instruct or advise or request or suggest to you what advice you should give to your clients?
A. No sir.
Q. In advising your clients as attorney I take it you advised them for their interests according to your best judgment?
Mr. Evans: Objection. Immaterial and incompetent.
Trial Examiner Ruckel: Objection sustained.
Q. In advising the Independent Union, Mr. Wiseman, whose interests were you attempting to serve?

Mr. Evans: Objected to as incompetent.

Trial Examiner Ruckel: Sustained.

Q. For whom were you acting in advising the Independent Union?

Mr. Evans: Objection.

Trial Examiner Ruckel: It is rather evident. He may answer.

2122 A. I was trying to advise for the interests of the Independent Union.

Q. Mr. Wiseman, during the year that you were representing the Independent Union did you also represent any American Federation of Labor or C I O unions?

Mr. Evans: Objection.

Trial Examiner Ruckel: He may answer.

A. For the past several years I have been attorney for the International Hod Carriers and Common Laborers Union of the Southern District of Illinois, the territory consisting of thirteen counties.

Q. That is an American Federation of Labor union?

A. That is an American Federation of Labor union; and I am what is known as their district attorney for the thirteen southern Illinois counties. I have also represented the Teamsters and Chauffeurs Union local in Alton.

Q. Is that an American Federation of Labor Union?

A. Yes, that is an American Federation of Labor Union; and I have represented other American Federation of Labor unions in various labor trials and advised them in different capacities.

Mr. McRoberts: I think that is all.

Q. (By Trial Examiner Ruckel) You are here in response to my subpoena?

A. Yes, I am here in response to subpoena.

2123 Cross Examination.

Q. (By Mr. Evans) Mr. Wiseman, did you participate in any joint meetings between representatives of the Independent Union and management?

A. No sir.

Q. Did you seek to participate in those conferences?

A. I was called out several times in conference with officers and the executive board of the Independent Union

and prepared for them certain agreements which were to be submitted to the Company, and I am informed that the executive board requested a joint meeting in which I was to participate as attorney for the Independent Union with the attorney or officers of the Western Cartridge Company, but no such meeting was ever seen fit to be held, and I never did meet with the management at any time during the two years I was attorney for the Independent Union.

Q. (By Mr. McRoberts) You know nothing about that matter except what you have been told?

A. That is right.

Mr. McRoberts: I move it be stricken as to what he was informed.

Trial Examiner Ruckel: That may be stricken.

Q. (By Mr. Evans) Did you have conversations at any time with representatives of the Company with respect to your participating in meetings?

2124 A. Not direct with the Company, no sir.

Q. With whom did you tlak?

A. I talked with the group of men of the Independent Union which was designated as the executive board.

Q. Who were they?

A. I believe there were two different boards during the two years that I was the attorney. One board, I believe—

Q. Let's have the last one?

A. The last board, I believe Mr. Harold Chapman, and I might be wrong as to his name, and he was Chairman.

Q. That gentleman sitting over there?

A. Yes, that is the gentleman sitting over here.

Q. That is Mr. J. B. Chapman. Who else was on the Board?

A. Mr. Harting was on the Board, as I recall it, a man named Rosch, and a man named Jones, and I believe a man named Roberts.

Mr. Evans: That is all.

Re-Direct Examination.

Q. (By Mr. McRoberts) Mr. Wiseman, were drafts of the proposed working agreement between the company and the independent union submitted to you by the independ-

ent union in the spring and early summer of 1941 for advice and criticism?

A. Yes sir.

Mr. McRoberts: That is all.

2125 Mr. Evans: That is all.

Trial Examiner Ruckel: No further questions.

(Witness excused.)

FRED PLUMB,

called as a witness, by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. McRoberts) Will you state your name, please.

A. Fred Plumb.

Q. Where do you live, Mr. Plumb?

A. Godfrey, Route Number 1.

Q. Where are you employed?

A. Western Cartridge Company.

Q. How long have you been with the Company?

A. About eight years this last time.

Q. What is your job with the Company?

A. Roller in the brass mill.

Q. Did you have the same job in 1937?

A. The same kind of work; different machine.

Q. Are you a foreman or supervisor, Mr. Plumb?

A. No, sir.

Q. Were you in 1937 or at any time in between?

A. No.

Q. Mr. Plumb, were you the first permanent chair-

2126 man of the Western Cartridge Employes Independent Union?

A. Yes sir.

Q. How long did you serve as its chairman?

A. One year.

Q. When did you join the Independent Union, Mr. Plumb?

A. I couldn't tell you offhand. It was, I would say, in the spring of 1937, but I would not say the exact date.

Q. Were you in the group of ten or more men who participated in the pre-organization activities of this Union?

A. No sir.

Q. That met at Mr. Manning's office?

A. No.

Q. Did you join at about the time the union was organized and its constitution was adopted?

A. Yes sir.

Q. Along about that time?

A. Yes sir.

Q. Who solicited you to join the union?

A. A fellow roller by the name of Cook.

Q. Did any foreman, supervisor, superintendent or official of the Western Cartridge Company ever say anything to you about joining the Independent Union?

A. No sir.

Q. Ever suggest or urge or advise you to join the Independent Union?

2127 A. No sir.

Q. What were the reasons, Mr. Plumb, which impelled you to join the Independent Union as contrasted to any other union?

Mr. Evans: Objection; immaterial and irrelevant.

Trial Examiner Ruckel: Objection sustained.

Mr. McRoberts: I make the same offer of proof in connection with this witness that was made with witnesses Mitchell and Barclay.

Trial Examiner Ruckel: Objection to the offer is sustained.

Q. After you were elected Chairman did you participate in collective bargaining meetings with representatives of the Company?

A. Yes.

Q. Where did the Independent Union get funds with which to carry on its activities and pay its bills?

A. Through dues collected from the members.

Q. Did you also get some funds from dances and activities of that sort?

A. Yes sir.

Q. Did you get any money from the Company?

A. No sir.

Q. Did the Company pay any of your bills, to your knowledge?

A. No sir.

2128 Q. During the time that you were Chairman did anyone representing the Company ever say anything to you about the manner in which the Union's affairs should be conducted?

A. No sir.

Q. Or suggest to you what should be done by the Union in conducting its affairs?

A. No sir.

Q. Who did direct the activities of the Independent Union during the time you were in office?

A. Repeat that, please.

Q. I say who did direct the activities of the Independent Union while you were an officer?

A. The Board—the Executive Board.

Q. Did any outsider have anything to do with directing the affairs and activities of the Independent Union?

A. No sir.

Q. This Executive Board is a Board that was elected by the members themselves?

A. Yes sir.

Q. Did the Company have anything to do with the election or selection of the Executive Board, to your knowledge?

A. No.

Q. After you ceased to be Chairman were you thereafter a representative or other officer of the Union?

A. No sir.

2129 Q. In your dealings with the Company, these collective bargaining dealings which you participated in, for whom were you acting?

Mr. Evans: Objection. Calls for a conclusion.

Trial Examiner Ruckel: Objection sustained.

Q. Whose interests were you seeking to serve?

Mr. Evans: Objection; same ground.

Trial Examiner Ruckel: Sustained.

Q. Mr. Plumb, did you solicit other members from time to time to join the Independent Union?

A. Yes sir.

Q. And have you in your capacity as an officer of the Union had the occasion to discuss with large numbers of the members the reasons which impelled them to join?

Mr. Evans: Objection. Leading.

Trial Examiner Ruckel: Objection sustained.

Q. Have you had any discussions with members of the Independent Union, large numbers of them, with respect to their reasons for joining the union?

Mr. Evans: I object. Very leading.

Trial Examiner Ruckel: Sustained.

Mr. McRoberts: It is certainly not a leading question, Mr. Examiner.

Mr. Evans: It is leading.

Trial Examiner Ruckel: It is immaterial anyway. It is hearsay, and it don't tell us what their reasons were.

2130 I have not even permitted witnesses to tell what their own reasons were.

Mr. McRoberts: I am trying to bring out, Mr. Examiner, a point which I have not included in the other offers of proof because I did not know which witnesses would testify to this particular point. The point is this; it is my information a large number of men and women who have joined the Independent Union joined the Independent Union not particularly because they were enthusiastic about the Independent Union, but they really preferred to join no union, and they joined the Independent Union simply in order to avoid having to join the A F of L, C I O or an outside union. I would have to bring the individual employes and hunt for the individual ones, knowing they could tell the facts, and not make this general offer of proof through this form. Knowing the Examiner's ruling, I do not want to attempt to sift through a large number of these individual employes in order to pick out the ones from whom I could properly make that proof.

Trial Examiner Ruckel: You can ask him off the record about others, if it is only information you want.

Mr. McRoberts: I will see if I can get individual employes. So the record may be clear, I will offer to prove by this witness in speaking with various employes and soliciting them to join the Independent Union and

2131 in discussing the affairs of the Independent Union with numbers of its members, a large number of

them advised him that they joined the Independent Union primarily because they did not want to be compelled to join an outside union, and that they would prefer not to have to belong to any union at all. I offer to prove that by this witness.

Mr. Evans: Mr. Examiner, that is an offer of proof that this was not a labor organization.

Mr. McRoberts: Are you objecting to it, Mr. Evans?

Mr. Evans: The offer of proof is immaterial, but if that is the purpose for which these employes joined this organization, then it is not a labor organization.

Trial Examiner Ruckel: Objection sustained.

Mr. McRoberts: That is all, Mr. Plumb.

Cross Examination.

Q. (By Mr. Evans) As a roller do you have a crew under you?

A. Yes sir.

Q. How many?

A. Two at the present time.

Q. Sometimes that number is larger?

A. Very seldom on my job. Sometimes it is. It varies on different rolls.

Q. You have supervision over these two employes?

A. Yes.

2132 Q. Clarence Nelson was also chairman of this organization?

A. Yes sir.

Q. He held the same kind of job you did?

A. Yes.

Q. About how many employees did you solicit to join this organization?

A. I couldn't say. We had meetings at the hall and I talked to them on several occasions like that.

Q. Did you solicit any before you became Chairman?

A. No.

Q. How did you become representative?

A. I was elected by the fellows in the mill is all I can tell you. They asked me to run for the job and I didn't really want it at first, but I was elected.

Q. You got on the ballot by reason of a petition?

A. Yes sir.

Q. And that petition was passed around in the plant among the men?

A. Yes.

Trial Examiner Ruckel: Got on the ballot for representative that is, or Chairman?

Mr. Evans: Representative.

Q. You became Chairman by reason of the election by six representatives?

A. Yes sir.

2133 Q. Not by the members as a whole?

A. No.

Q. None of the officers during the life of the organization have been elected by the members as a whole, have they?

A. No sir.

Q. How many general meetings were held during the time you were Chairman?

A. I wouldn't remember. I couldn't say exactly. I don't remember.

Q. It was not more than two or three, was it?

A. No.

Q. In other words, the Executive Board conducted the affairs of the Union?

A. Yes.

Q. For all intents and purposes?

A. Yes.

Q. This testimony you gave on dues; did you handle the finances of the Union during the time you were Chairman?

A. No sir.

Q. How do you know where the money came from except what somebody else told you?

A. I know some of it was given to me to turn in to the Secretary-Treasurer, and then after we got the checkoff system it came through a check from the Company—that is after we got the checkoff system started.

2134 Q. Before the checkoff it is only personal information of what dues you collected?

A. I didn't understand the question.

Q. I say before the checkoff system started the only personal knowledge you have is of dues you collected?

A. I and the other fellows that did collect them. We tried very hard to collect them.

Q. You do not know where the other money came from, actually, do you?

A. No.

Q. Did you pay the bills for the Union, or the Secretary-Treasurer?

A. The Secretary-Treasurer paid them.

Q. You do not know what bills he paid or what bills the Company might have paid, do you, of your own knowledge?

A. Yes, I know bills were paid out of our own money, and I know what kind of bills they were, if that is what you mean—telephone bills and his salary. We paid his salary.

Q. (By Trial Examiner Ruckel) Whose salary?

A. Secretary-Treasurer. He didn't work at the Company.

Q. That is Sullivan?

A. Yes.

Q. (By Mr. Evans) Sullivan was an outsider to that extent, was he not?

A. Yes sir.

2135 Q. He was more or less business agent?

A. No.

Q. Or manager of the affairs of the union?

A. Yes.

Mr. Evans: That is all.

Mr. McRoberts: That is all.

Q. (By Trial Examiner Ruckel) Mr. Plumb, just one question: I am struck by the fact that, so far as it appears in the evidence, none of the men who originated the union or served as temporary officers became a permanent officer. Can you tell me why that was? Was there any understanding or agreement to that effect?

A. No, I couldn't; I couldn't tell you exactly why that was, other than they together worked pretty hard getting it organized and felt—a couple of fellows told me they would be very glad to let someone else carry on and they worked pretty hard getting it going.

Trial Examiner Ruckel: That is all.

Re-Direct Examination.

Q. (By Mr. McRoberts) Except for the Secretary-Treasurer, who drew his salary, was there anything in this job of running this union?

A. No.

Q. Except some grief?

A. That is all, and plenty of that.

2136 Mr. Evans: I move to strike that.

Trial Examiner Ruckel: It may be stricken.

Q. Mr. Barclay Wilmering was one of the six representatives during your chairmanship, was he not?

A. Yes.

Q. I believe the evidence shows he was one of the original group that assisted in organizing the union?

A. Yes sir.

Trial Examiner Ruckel: My question meant only officers. I knew there were one or two representatives.

Mr. McRoberts: Just to clear this up, it is in evidence in the form of the minutes themselves. I believe the minutes indicate there were two temporary officers—temporary chairman, and Sullivan, who was temporary secretary-treasurer. Sullivan, the temporary secretary-treasurer, became the permanent secretary-treasurer. Mr. Tuet did not succeed as an officer. Mr. Wilmering, who was one of the initial group and attended this meeting at Mr. Manning's office, was active in forming, became a representative from District Number 6, I believe it was, and my recollection is that the minutes will indicate Mr. Barclay, who attended some of these original meetings, became representative from another Division.

Trial Examiner Ruckel: With the exception of Sullivan, no temporary officer or organizer became a perma-

2137 nent officer.

Mr. McRoberts: No, but to clear that up, Mr. Examiner, under the constitution the six representatives were elected, one from each of the divisions, and then those six representatives elected from their number the chairman, vice-chairman and secretary-treasurer, so any of these temporary organizers who failed to become representatives would not have been eligible to become permanent officers. I believe that is the correct interpretation.

Trial Examiner Ruckel: Any further questions?

Mr. Evans: No.

Q. (By Mr. McRoberts) Mr. Plumb, at these meetings of your union and as shown by the minutes, the Secretary-Treasurer would present bills for approval?

A. Yes sir.

Q. And your executive committee would vote to approve or disapprove their payment?

A. Yes.

Q. And he would report the state of finances of the union?

A. Yes.

Q. And I believe the minutes will show that the Secretary-Treasurer's records were audited by members of the union from time to time?

A. Yes sir.

Q. And will show what the receipts and disbursements were?

2138 A. Yes sir.

Q. And the nature of the receipts?

A. Yes.

Q. What was received from dues and what was received from other sources?

A. Yes sir.

Mr. McRoberts: That is all.

Mr. Evans: That is all.

Trial Examiner Ruckel: No questions.

(Witness excused)

CLETUS BAKER,

a witness, called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. McRoberts) Will you state your name, please?

A. Cletus Baker.

Q. Where do you live, Mr. Baker?

A. 2821 Viewland Avenue, Alton.

Q. Where are you employed?

A. The Western Cartridge Company.

Q. How long have you been with the Company?

A. Fourteen years.

Q. What is your position or job with the company?
A. At present?
2139 Q. Yes.
A. Assistant foreman.
Q. In what department?
A. Cutting.
Q. How long have you been assistant foreman?
A. One year.
Q. Before that what was your job?
A. Operator.
Q. In what department?
A. Cutting department; cutting machine.
Q. Did you hold that job in 1937?
A. I did.
Q. On the same job until you became an assistant foreman?
A. That is right.
Q. Mr. Baker, did you become a member of the Western Cartridge Employes Independent Union?
A. I did.
Q. When did you join that union?
A. It was approximately May 1937, or June.
Q. You joined when it was first organized?
A. That is right.
Q. Did you participate in its preorganization meetings at Mr. Manning's office, or any of those activities?
A. No.
Q. Who solicited you to join this union?
2140 A. Do you want the man's name?
Q. Do you recall?
A. His name was Oliver Reed.
Q. What was his position with the Company?
A. Tractor driver.
Q. Tractor driver?
A. Operator.
Q. Was he a foreman or superintendent?
A. No; he is still a tractor operator.
Q. He was just an operator?
A. Yes sir.
Q. Did any foreman, supervisor, superintendent or official of the company ever suggest to you that you join this union?
A. No.

Q. Or tell you or order you to?
A. No.
Q. Or say anything about joining to you?
A. No.
Q. Will you state what were your reasons which impelled you to join this union?
Mr. Evans: I object.
Trial Examiner Ruckel: Objection sustained.
Mr. McRoberts: I make the same offer of proof with respect to this witness, Mr. Examiner.
Trial Examiner Ruckel: The same ruling.
2141 Q. Mr. Baker, did you thereafter become an officer of the Independent Union?
A. I did.
Q. When was that?
A. I believe it was in the fall of 1937. I was elected committeeman.
Q. You became a committeeman, in your department?
A. That is right.
Q. How long did you remain a committeeman?
A. I was a committeeman up until 1939.
Q. In 1939 were you elected to some other office?
A. I was elected representative.
Q. Of which Division?
A. Number 1, brass mill.
Q. Having been elected from Division 1, you were thereafter elected by the Executive Board to the position of Chairman?
A. I was.
Q. How long did you serve as chairman?
A. One year.
Q. Mr. Baker, while you were committeeman and representative and chairman who conducted and directed the affairs and activities of the Independent Union?
A. A six man board.
Q. Did anyone else have anything to do with those matters, to your knowledge?
2142 A. No.
Q. Did any official or officer or representative of the Company participate in any way to your knowledge?
A. No sir.
Q. During that time where did the independent union

get the funds with which to carry on its activities and pay its bills?

A. Dues from the members and recreation activities and dances.

Q. Did they get any funds, directly or indirectly, from the Company, to your knowledge?

A. No sir.

Q. Did anyone on behalf of the Company ever make any suggestion or request or give you any instructions with respect to the carrying on of the activities of the Union?

A. No sir.

Q. Or tell you what the union or you should or should not do?

A. No sir.

Q. Did you have any connection with the Company during this time or any dealings with the Company except collective bargaining dealings in which you participated with other representatives of the union?

A. No sir.

Mr. McRoberts: I think that is all.

Cross Examination.

Q. (By Mr. Evans) How did you get in as committeeman in 1937?

2143

A. I was elected.

Q. Was there a petition passed around the department?

A. Yes sir.

Q. How big was the department for which you became committeeman?

A. It was approximately eighty men.

Q. Did any foreman or supervisor interfere with the passing around of that petition?

A. No sir.

Q. As a result of that petition you were placed on some kind of a ballot and became committeeman?

A. Yes sir.

Q. Were you present at the meeting on August 12, 1938, when the basic agreement was signed?

A. I was.

Q. How were you called into that meeting?

A. I was called by Mr. Fred Plumb.

Q. Was he in your division?

A. Yes sir.

Q. Did you get paid for the time you spent in that meeting?

A. No sir.

Q. Was that after your work hours?

A. I believe this one was.

2144 Mr. Evans: That is all.

Mr. McRoberts: That is all.

Q. (By Trial Examiner Ruckel) I have just one or two questions: You were elected a representative Number 1, of the brass mill in 1939?

A. Yes sir.

Q. What part of 1939?

A. I believe it was June of 1937.

Q. And you served as representative until what time?

A. The same time Mr. Chapman was elected. He beat me on the next election, and I can't recall exactly. That was August 1940, I think.

Q. August 1940 you ceased to be a representative, is that right?

A. Yes sir.

Q. And became chairman of the Board?

A. I was chairman of the Board.

Q. During the time you were representative?

A. That is right.

Q. After you ceased to be a representative you ceased to be chairman of the Board also?

A. That is right.

Q. You say you are a foreman now?

A. Yes sir.

Q. When did you first assume any supervisory authority?

2145 A. January 12, 1940.

Q. (By Mr. McRoberts) 1940 or 1941?

A. 1941.

Q. (By Trial Examiner Ruckel) So the record will be clear, will you explain the difference between being a committeeman and being a representative?

A. A committeeman represents his department individually, and a representative represents his department as a whole—he represents the individual department. You

see the department is drawn up into departmental divisions, and we only represent a small amount of men, where he represents the whole department.

Q. The committeeman represents one group within the division?

A. That is right.

Q. How is that group determined?

A. It is all different operations; there is rolling, cutting, and slitting and finishing departments.

Q. Within the same division?

A. That is right.

Q. And the committeeman represents one of those groups within the division?

A. That is right.

Q. Whereas the representative represents the whole department?

2146 A. The whole department.

Trial Examiner Ruckel: That is all.

Q. (By Mr. McRoberts) And these committeemen are called advisory committeemen?

A. Yes.

Q. And the theory is they advise the representatives of each division?

A. That is right.

Q. And they handle grievances and matters in their own little area?

A. That is right.

Mr. McRoberts: That is all.

Mr. Evans: That is all.

Trial Examiner Ruckel: No further questions.

(Witness excused.)

Mr. McRoberts: I would like to ask Mr. Plumb one question.

Trial Examiner Ruckel: Yes.

FRED PLUMB,

called as a witness, by and on behalf of the Respondent, having been previously sworn, was recalled and testified as follows:

Direct Examination.

Q. (By Mr. McRoberts) Mr. Plumb, you spoke of having two men in your gang or crew; what kind of employes are they?

2147 A. Roller helpers.

Q. Roller helpers?

A. Yes sir.

Q. You are the roller and they are your two helpers, is that correct?

A. Yes sir.

Q. Do you have anything to do with firing or hiring those helpers?

A. No sir.

Q. Or fixing their pay or disciplining them?

A. No.

Q. They are just your helpers?

A. Yes sir.

Mr. McRoberts: That is all.

Mr. Evans: No questions.

(Witness excused.)

Trial Examiner Ruckel: Before Mr. Baker leaves there is one question I want to ask him.

CLETUS BAKER,

called as a witness, by and on behalf of the Respondent, having been previously sworn, was recalled and testified as follows:

Q. (By Trial Examiner Ruckel) Are you a member of the independent union?

A. I am.

2148 Q. At the present time?

A. Yes sir.

Q. You pay your dues?

A. Yes sir.

Q. You have an assignment for your dues?

A. Yes.

Q. The constitution seems to make supervisors ineligible for membership in the independent union. Can you tell us how it is you continue to be eligible as a member?

A. In a way it is probably my fault. I should perhaps sign a statement for it to be discontinued.

Trial Examiner Ruckel: No further questions.

Q. (By Mr. McRoberts) In operating the union do you

admit to membership foremen or supervisors of the Company?

A. Sir?

Q. Do you let foremen or supervisors join the union?

A. They have, yes.

Q. Have they joined while they were foremen?

A. They became foremen afterwards.

Q. While they are foremen do you let them join then?

A. No.

Q. Some of your members, while they are members, have been raised to the job of foreman?

A. That is correct.

Q. What has been your practice or policy when they do that?

2149 A. There have been cases where they have been thrown out.

Q. In your case nobody has asked you to resign?

A. That is right.

Q. And you have not been around to resign?

A. That is right.

Mr. McRoberts: That is all.

(Witness excused.)

WILLIAM B. SHINDEL,

called as a witness, by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. McRoberts) Will you state your name, please?

A. William B. Shindel.

Q. Where do you live, Mr. Shindel?

A. 715 North Main Street, Edwardsville, Illinois.

Q. Where are you employed?

A. East Alton Manufacturing Company.

Q. What is your job there?

A. Shift supervisor.

Q. How long have you held that position?

A. Since about last March.

Q. Before July of 1941 were you employed by the Western Cartridge Company in a similar capacity?

A. That is correct.

2150 Q. From about March to July you were working on that job for the Western Cartridge Company?

A. That is correct.

Q. Mr. Shindel, did I ask when you went with the Western Cartridge Company?

A. October 1, 1940.

Q. Before you became a foreman what sort of work were you doing?

A. I was employed in the experimental laboratory.

Q. Mr. Shindel, Mr. Elden Weishaupt has testified in this hearing, pages 659 and 660, with respect to a conversation which he says that he had with you and he testified to this effect:

"I was working, I believe, 4 to 12 one night, and I had a boil on my neck, and I was going to the first-aid, and the first-aid is over on the other side, and I asked him for a pass to the gate so I could get to the other side, and he said 'Come down to the yard office and I will get you a pass', and he said 'I have a little pick-up truck out there, and I will take you down there with me', so he did, and after he issued the pass at the yard office he said 'I will take you down to the gate and save you a walk', and he started out, and he asked me, he said 'Are you still an ambitious youngster?' and I said 'I would like to get ahead down here if there is any possible chance',

2151 and he said 'There are several chances to get ahead', and I said 'Well, I guess the best way to get ahead down here is to work and show you are capable of doing your work and you might get somewhere', and he said 'There are several ways to do that, if you know the right way, and they have talked union down here', and he said 'this election is going to come up', and he says 'I can't tell you which way to vote, it is just like Democrat or Republican; I can tell you I would like for you to vote Republican, but you still can tell me and vote Democratic', and I said 'I don't know, everybody has been very nice around here and I like everybody I work with, and I really haven't had no kick', and we talked about that, and he said 'Well, you know you can really get ahead around here

if you know the right way', and he said 'You know this union is coming in here and they have caused quite a bit of trouble in different places', and he said 'I read in the paper here a while back where there was some knitting mill', and I forget whether it was Chester, but it was in Southern Illinois, where they had moved the knitting mill away from there to another part of the country to avoid the union' and he said 'You know something like this could happen here, and I don't know that it will, and they could shut down this place if the union gets in here, but I don't think it will', and I said 'I belong to the
2152 union, and like I told you a while ago, everybody is so nice down here to me, and I belong to it now, and I think I will be a damned fool and I will stick with it, and if the rest of them are damned fools I will be one of them, but I don't think I will be', and that is all that was said, and he asked me if I was sore he talked to me and I said 'No, I am not sore, it don't make any difference to me, I can tell you what I think and you can tell me what you think', and that is all that was said."

Did you have a conversation with Mr. Weishaupt of that nature on that occasion in question?

A. I believe the testimony Mr. Weishaupt has given is essentially correct.

Q. Mr. Shindel, you did have a conversation along that line with Mr. Weishaupt?

A. Yes sir.

Q. Who brought up the question of union matters in that conversation?

Mr. Evans: I object.

Trial Examiner Ruckel: Sustained.

Mr. McRoberts: May I know the basis of the objection and ruling?

Trial Examiner Ruckel: The basis of my ruling was leading.

Mr. McRoberts: I asked him the question who
2153 brought up the question, and I do not see that is leading, and I cannot see how it can suggest an answer.

Trial Examiner Ruckel: Possibly not, but I thought the better question would be to tell us how the conversation came about.

Mr. McRoberts: I am perfectly willing to do that.

Q. Tell us how the conversation came about?

A. At that time the union topic was pretty terrific in the plant and it came about in a natural way in the conversation in the pickup truck, and as to who brought up the question I am unable to state.

Q. What kind of an employe was Mr. Weishaupt?

A. I believe at the time of the conversation Mr. Weishaupt had been with us about two weeks, and he was showing signs of becoming a very capable operator. At that time we were starting up new furnaces and any one that was capable and would apply himself was able to advance rapidly to an operator's job, and Weishaupt had shown signs that if he would get down to work and apply himself he would be capable of operating along with more experienced men.

Q. (By Trial Examiner Ruckel) Operating what?

A. Hardening process on the ball powder line—8300 pound line.

Q. (By Mr. McRoberts) When you said to him something to the effect there were different ways to get
2154 ahead, did you tell him what those ways were?

Mr. Evans: Objection.

Trial Examiner Ruckel: He may answer.

A. Possibly not in so many words, but I tried to convey the idea—

Mr. Evans: Objection.

Q. Tell us in substance what you said to him if you do not remember the exact words?

A. In substance I told him by applying himself and following the instructions of the foremen and learning the operations as rapidly as possible he would advance rapidly in the operating field.

Q. Did he do that?

A. He did.

Q. Did you advance him?

A. In about six weeks after he had hired in he was raised from 58 to 72 cents, a raise of 14 cents, which is rather unusual for that length of time in that operation.

Q. At whose suggestion was that done?

A. At my suggestion.

Q. Did you say to him anything to the effect that joining would prevent him from getting ahead?

A. I did not.

Q. Or talking about the union would prevent him getting ahead?

2155 A. Only if it prevented him from doing his work.

Q. When he quotes you as saying "You know you really can get ahead around here if you know the right way" did you say anything to him that joining the union was the wrong way?

Mr. Evans: Objection; leading.

Q. Or anything to that effect?

A. There is only one way to get ahead—

Q. Just a moment.

Trial Examiner Ruckel: Objection sustained.

Q. Did you say to him, in so many words, "Well, you know you really can get ahead around here if you know the right way"?

Mr. Evans: I object. The witness has already stated the conversation as repeated is essentially correct.

Trial Examiner Ruckel: It is ambiguous. I think he may answer.

A. The right way to get ahead—

Q. What did you tell him about the right way to get ahead?

A. By application to his work, and by that I meant steady application and hard work.

Mr. Evans: I move to strike what the witness meant.

Trial Examiner Ruckel: He said that is what he said, I believe.

Q. Is that what you told Weishaupt?

2156 A. Yes sir.

Q. There is some reference in this testimony to the moving of a knitting mill to another part of the country. Had anyone on behalf of the Company told you that the smokeless powder plant or any part of the East Alton plant might be moved because of union activities?

Mr. Evans: Objected to; immaterial.

Trial Examiner Ruckel: Objection sustained.

Q. Did you tell him this plant might be moved if the union would be successful in organizing it?

Mr. Evans: Objection. Leading.

Trial Examiner Ruckel: He has already said, substantially, he pointed out the instance of this other mill and indicated there was a possibility it might be done here. He has admitted that and now you are asking him—

Mr. McRoberts: He says it is substantially correct, and I am trying to find out to what extent it is correct and to what extent it is the language or not exactly the language.

Trial Examiner Ruckel: Tell us, as near as you can recall, what you told him.

Q. What did you tell him about moving the knitting mill, and how did that conversation come about, and what was said.

A. In the conversation I remembered reading a case that appeared before Miss Dorothea de Schweinitz in St.
2157 Louis with regard to a knitting mill that was established at Chester, Illinois, and during the conversation that came to my mind, and I remarked in passing that that plant had been moved and apparently from union activity. The information that I gave in that conversation was taken from a newspaper—

Mr. Evans: Objection.

Q. Did you tell him that? Did you tell him about reading it in the paper?

Mr. Evans: Objection. Leading.

Trial Examiner Ruckel: Objection sustained.

Q. Did you tell him where you got the information?

A. I told him it was taken from the newspaper.

Q. Mr. Shindel, at any time in this conversation did you tell Mr. Weishaupt or advise him not to belong to the union?

Mr. Evans: Objection.

Trial Examiner Ruckel: Sustained.

Mr. Evans: Counsel has read in the entire conversation and the witness says it is essentially correct, and I do not see the purpose of counsel going over it bit by bit with leading questions.

Q. At any time in this conversation did you advise Mr. Weishaupt with respect to joining or not joining or remaining a member or not remaining a member of the Union?

Mr. Evans: Objection.

Trial Examiner Ruckel: Sustained.

2158 Mr. McRoberts: I offer to prove by this witness that the answer would be he gave no such advice or suggestion.

Trial Examiner Ruckel: The answer would be a conclusion, which is the basis of the Examiner's ruling.

Q. Mr. Shindel, what, if anything, did you say to Mr. Weishaupt about joining or failing to join or remaining a member or withdrawing from the union?

Mr. Evans: I object.

Trial Examiner Ruckel: He may answer.

A. I told Mr. Weishaupt just as his religion or politics was his own business so was his union affiliation or non-affiliation as far as I was concerned.

Q. Was this conversation about which we have been talking before or after you recommended him for an increase in pay you have testified to?

A. It was approximately a month before he was recommended for a raise.

Mr. McRoberts: That is all.

Mr. Evans: No questions.

Trial Examiner Ruckel: That is all.

(Witness excused.)

F. W. PIVODA,

called as a witness, for and on behalf of the Respondent, being first duly sworn, was examined and testified as
2159 follows:

Direct Examination.

Q. (By Mr. McRoberts) Will you state your name, please?

A. F. W. Pivoda.

Q. Where do you live?

A. 324 Picker, Wood River.

Q. Where are you employed?

A. I am employed at the East Alton Manufacturing Company.

Q. What is your position there?

A. I am foreman of the yard cleaning up crew and over trucks.

Q. Are you an hourly paid foreman?

A. Yes sir.

Q. Previous to employment by the East Alton Manufacturing Company were you employed by the Western Cartridge Company?

A. Yes.

Q. Doing the same kind of work?

A. The same work, yes.

Q. Were you an hourly paid foreman for the Western Cartridge Company?

A. Yes.

Q. When did you start to work for the Western Cartridge Company?

A. About March 24, 1941.

Q. Mr. Pivoda, as an hourly paid foreman I believe you were eligible to membership in the American Fed-
2160 eration of Labor or the Chemical Workers Union; did you ever join that union?

A. No.

Q. Were you ever solicited to join it?

A. No, sir.

Q. Mr. Pivoda, a man by the name of Robert Carroll has testified on page 142 of the transcript in this case, that he had a conversation with you in the spring of 1941, in which you said that he, referring to Mr. Wortz, said he sent two men out there to him—meaning you—and told you they were good men, but they were awful strong union men and it was up to you to break that up, and he said they were good workers and done their work right, so you did not say anything to the men. Did you have any such conversation with Robert Carroll?

A. I don't recall any such conversation with Robert Carroll.

Q. Did you ever receive any such instructions as that from Mr. Wortz?

A. No.

Q. With respect to breaking up two strong union men or anything to that effect?

A. No sir.

Q. Do you know Mr. Carroll?

A. Mr. Carroll was identified to me this morning for the first time. I had known his face but I didn't know his name.

2161 Q. He was identified to you by Mr. Irish?

A. Mr. Shindel.

Q. Mr. Pivoda, a witness by the name of Charles Womack has testified in this case, at page 649, just a few days after you started taking the trucks over he had a conversation with you in which he said that you told him he had better lay low on union talk, that they had spotters in the plant. First, Mr. Pivoda, to your knowledge, were there any spotters in this plant?

A. I have never heard of any.

Q. At that time or since?

A. At that time or since.

Q. Did you tell him there were spotters in this plant?

A. As I recall—

Q. If not, tell us what you did tell him.

A. I know if I mentioned spotters I told him you never knew when there might be spotters.

Trial Examiner Ruckel: Cannot we just have the whole conversation between them?

Q. Yes. Will you tell us the whole conversation and will you tell us the basis of what you told him?

A. Well, if we go back that far—

Q. Very briefly. I do not want the whole history.

A. I would have to tell the Examiner the decade between 1930 and 1940 I spent outside of the United States.

2162 Mr. Evans: I do not think that is important, and I think it is the conversation he had with Womack.

A. It leads up to that.

Trial Examiner Ruckel: Go ahead.

A. My experience in industrial affairs in this territory was acquired prior to 1930. I came back from a brief vacation at home and took this position and advanced to the post which I still hold. There was much talk of unionism and the job which I took over was in a mess. Womack was the only man I had who knew what was going on. The conversations I overheard here and there led me to believe Womack was quite active in union organizing within the plant; I did not want to lose him because he was the only man I had to lean on, and I went to him and I told him I had heard some of this talk he was organizing, and I asked him—my words were to keep

his nose clean; and I went on to tell him I had no prejudice for or against a union, that I had a brother who had done well in the union, and I had a brother-in-law who was so radical I considered him a horse's ass; and Womack at that time said "I will confine my activities to outside of the plant," and I told him it made no difference to me whether he joined or did not join. I didn't know what protection men had on that kind of work, and I just didn't want to take any chances on losing the man.

Q. Had he helped you on learning the ropes on your job?

2163 A. He had helped me considerably; among other things he told me who was who and who did rate or didn't rate on service, and helped me considerably in getting the job rolling along smoothly.

Q. (By Trial Examiner Ruckel) Just to clear it up, what connection was there between the point that you were not in this country between 1930 and your conversation with Mr. Womack?

A. Much of the legislation of which you, Mr. Examiner, are a result had taken place in that decade.

Q. Between 1930—

A. And 1940.

Q. You came back in the country in 1940?

A. Yes, and I wasn't in any industrial plant—

Q. (By Mr. McRoberts) May I ask another question, to make that more specific: Before leaving this country did you have experience in industrial plants where there were spotters and where any questions of union activity were frowned on?

A. I had.

Q. That was the reason?

A. That was the reason, and that was still in my mind, and I didn't want to see one of my men caught.

Q. Had you received any instructions or orders from any of your superiors not to let anyone talk union

2164 or mention unions or engage in union activities under you?

A. No sir.

Q. In the Western Cartridge Company?

A. No.

Q. (By Trial Examiner Ruckel) Just as a matter of

interest, what country was it you were in, if it is not confidential?

A. I was in Aruba Dutch West Indies.

Mr. McRoberts: That is all.

Trial Examiner Ruckel: Cross-examine.

Cross Examination.

Q. (By Mr. Evans) This conversation with Mr. Womack took place last spring?

A. Yes, the weather was still chilly and I recall I took out the heater gang at the time.

Q. Before the Labor Board election in the smokeless powder division?

A. Yes, long before that.

Q. Did you have any conversation with Mr. Wortz when you were hired?

A. The usual interview.

Q. You were hired as a foreman?

A. No, sir, I was hired and put on the powder line a few days.

Q. Then when you were made foreman did Mr. Wortz call you in and have a talk with you?

2165 A. He did.

Q. What was that conversation at that time.

A. Mr. Wortz said he had a job opening up there, he had offered it to six men in the plant who turned it down, and he outlined what it was and wanted to know if I could handle it, and I told him I could.

Q. Is that all?

A. That is all.

Q. Did he mention the fact that there was a union in the plant and the A F of L was organizing, and that sort of thing, and what your relationship should be?

A. Mr. Wortz had just taken over his position at that time and his only advice to me of that sort was to say things were in a mess and he hoped we could get it straightened out and get it rolling.

Q. Do you know Richard Price?

A. Yes.

Mr. McRoberts: Who?

Mr. Evans: Richard Price.

Q. Did you have a conversation with him around about July 1941?

Mr. McRoberts: Wait just a moment, Mr. Examiner. There is no evidence in the record with respect to that.

Mr. Evans: It is cross-examination, and I am not limited to direct.

2166 Mr. McRoberts: We have been attempting to refute testimony offered on the Board's case in chief. I do not think on cross-examination you should bring in more of these cases on which we will have to bring in witnesses to refute.

Mr. Evans: Counsel is asking for limitation on cross-examination to matters on direct.

Trial Examiner Ruckel: This matter was not covered, was it, at all?

Mr. McRoberts: It was not covered at all in the case, and I am not talking about conversations of this particular witness, but it was not covered by the Board's case.

Mr. Evans: That does not matter.

Trial Examiner Ruckel: He may answer.

A. I have a conversation with Mr. Price every day, and he is one of my employes.

Q. Did you have one along about July 1941 at which matters concerning Shorty Sauls and organization of employes, and that sort of thing, took place?

A. No. I might have mentioned Shorty Sauls. I don't know just what I might have said. His names comes up quite frequently yet.

Q. Was there a discussion at that time about a strike between you and Mr. Price?

A. I don't recall any such conversation.

Q. Was the conversation substantially as follows:

2167 That you and he got to discussing a threatened strike, and he said he hoped the Company would recognize the union, so there would not be any necessity for a strike, "If you do go out use your head, don't get radical, or you will be sorry later," and that Womack, who had been active in the union, would possibly lose out, and that the Shorty Sauls combination had been broken up, that you had orders to fire Womack, but that you had been able to keep him. Do you remember such a conversation now?

A. No, I don't remember such a conversation. I have discussed Shorty Sauls and the reasons I thought he was fired, although there was no reasons given to the public and it was pure speculation.

Q. (By Trial Examiner Ruckel) Was that the substance of your speculation?

A. The substance of the speculation of why he was fired was because he didn't want to listen to any superior, he wanted to do everything his own way or not at all.

Q. (By Mr. Evans) With respect to the reason for dismissal?

A. But as far as Shorty Sauls having anything to do with the strike, I don't recall any conversation of that kind at all.

Q. Did you have any conversation with Price at which any of those matters were discussed that I mentioned?

A. I don't recall any conversation. I have asked
2168 for conservatism at times when men were discussing strike, I have urged if they did strike not to go out and tear up things, that I couldn't see that it would get them any place.

Q. With whom did you discuss that matter?

A. That was a general discussion. There are a lot of men go through my office and I don't recall discussing it with any particular individual.

Mr. Evans: That is all.

Re-Direct Examination.

Q. (By Mr. McRoberts) That was last spring and summer, when there was some talk about a strike in the smokeless powder division?

A. Yes; as I recall they discussed amongst themselves strikes at two different times.

Q. Had you received any instructions to fire Womack?

A. No.

Mr. McRoberts: That is all.

Mr. Evans: That is all.

(Witness excused.)

ARTHUR ARNOLD,

called as a witness, by and on behalf of the Respondent, having been previously sworn, was recalled and testified as follows:

Direct Examination.

Q. (By Mr. McRoberts) Mr. Arnold, you have testi-
2169 fied before in this case and identified yourself, have you not?

A. Yes sir.

Q. Mr. Arnold, were you an hourly paid foreman in April 1941?

A. No, I was not.

Q. When did you become a salaried foreman?

A. The first of March 1941.

Q. Mr. Arnold, Mr. Ellis McPherson has testified, on December 12th, at pages 637 and 638, that he had a conversation with you and he places it on the 25th of April 1941, at which he says there was some talk about different men joining or withdrawing from the Chemical Workers Local Union. I will ask you whether or not there was a conversation with him about that time?

A. I suppose there was; there were several conversations along that time on the lines of the union.

Q. Did you in that conversation, or any other conversation, ask Mr. McPherson to withdraw from the Chemical Workers Union?

A. No, sir, I did not.

Q. Did you in this conversation or any other conversation tell him the Company did not like foremen to belong to the Independent Union?

A. No, I did not.

Trial Examiner Ruckel: Did not like foremen to belong to the Independent Union?

Mr. McRoberts: Excuse me. Foremen to belong to
2170 the Chemical Workers Union?

A. No, I did not.

Mr. McRoberts: That is all.

Cross-Examination.

Q. (By Mr. Evans) You say you did have a conversation with him about the date which he testified?

A. I would think I did. I talked to him several times.

Q. What was the conversation?

A. I couldn't recall the conversation word for word, what was said.

Q. Do you remember anything that was said?

A. I do remember talking with him and I told him it was a man's business belonging or not belonging, as he pleased, we couldn't influence him to belong or not to belong.

Q. What else?

A. I don't recall just exactly what did take place.

Q. Other things were said, were they?

A. Well, I don't know. I don't know whether there were or not.

Q. Then you might have asked him to withdraw from the A. F. of L union?

A. No, I did not.

Q. But other things were said that you do not recall?

A. No, I don't recall offhand what I said.

Mr. Evans: That is all.

2171 Re-Direct Examination.

Q. (By Mr. McRoberts) Did you ever ask any employe to withdraw from the Chemical Workers Union?

A. No, I didn't.

Q. Or not to join it?

A. No.

Q. (By Trial Examiner Ruckel) Do you recall whether or not the A. F. of L was mentioned at the conversation?

A. I think it was, yes.

Q. Was his membership in it discussed?

A. No. I do remember that he told me that he belonged and he was going to stay with them, and I told him I didn't blame him for that, because if he dropped out he probably never could get back with them.

Trial Examiner Ruckel: That is all.

Mr. McRoberts: That is all.

Trial Examiner Ruckel: Any further questions?

Mr. Evans: No further questions.

(Witness excused.)

Trial Examiner Ruckel: We will recess for ten minutes.

(Ten-minute recess then had.)

S. R. IRISH,

called as a witness, by and on behalf of the Respondent, having been previously sworn, was examined and testified as follows:

2172 Direct Examination.

Q. (By Mr. McRoberts) Mr. Irish, will you describe the method whereby obtaining of signatures of employes to initial contracts and extension contracts has obtained in the plant?

A. Very briefly, a record is sent to the contract office from the employment office as to all changes, new employments, releases and transfers. That is done once a week. From those follow up records are maintained, and at the expiration of three months from the time of a new employe's entrance in the service a list if submitted, either by telephone or on a piece of paper, to the foreman to determine whether or not they should be signed.

Q. By that what you mean?

A. Before an individual is offered the first original contract they have to be such employes that are going to be retained.

Q. Go ahead.

A. Following that usually notes are left clipped to the clock cards of the men in most of the divisions. The brass mill have signed up the employes direct in the brass mill office, under the supervision of the contract office, and a list is sent to the brass mill semi-monthly, to give the list of those that are to be signed either to an extension
2173 or to a new contract, and the contracts are typed and sent up with that list.

Q. That is the practice that has been followed in the brass mill?

A. Yes sir.

Q. And in the casting shop?

A. That goes all together with the brass mill group, and any that fail to come in follow up notes are put on their clock cards, and in some cases telephone messages are sent to the department heads or foremen to have them come in before the deadline.

Q. Mr. Irish, have you, at my request, or at the request of others, in connection with the preparation of this hearing, attempted to get in touch with Russell Lord, Gordon Tibbetts, Hersher McCauley, and Mr. Schuarte, I do not recall his initials.

A. Yes sir.

Q. Are any of those men still connected with the Western Cartridge Company, or any of its affiliated companies?

A. No sir.

Q. Are any of those men in this community so far as you have been able to learn?

A. No sir. Mr. Tibbetts is in Washington. Mr. Lord is somewhere with the United States armed forces, and he was down in a camp in the South somewhere, and where he is now we do not know.

2174 Q. Schuarte?

A. Schuarte, from several sources I learned that he has gone to California.

Q. Have you any information about McCauley?

A. McCauley resigned from the Company to go with, I believe, it is the Revere Brass & Copper Company in the Detroit area. I am not sure it is in Detroit, but in that area.

Q. That is all the information you have on any of these men?

A. Yes. They were all out of reach from anything we could get.

Mr. McRoberts: Mr. Examiner, there may be some others whose absence I wish to account for on checking over my notes. Just at the moment that is all.

Cross-Examination.

Q. (By Mr. Evans) You said individual contracts are signed in the brass mill by the brass mill, is that correct?

A. That is correct.

Q. Where are they signed for all the departments?

A. Practically all of them are signed in the contract office.

Q. Is that because of geographical convenience?

A. There are two reasons that have been given to me at the time I took over the operation of the contract office: It is rather difficult to remove brass mill men from their jobs and it is a continuous operation, and it is con-
2175 siderably farther to the contract office than to the brass mill office.

Q. What connection did you or do you have with the contract office?

A. At the present time?

Q. Yes, or for the years past?

A. At the present time only as assistant to Mr. Schotters, who has direct supervision over the whole, and from about the first of January 1941 until about the first of June 1941 I had direct supervision in the contract office and handled the entire procedure.

Q. Then did you or some member of your staff, from January to June, interview employes with respect to individual contracts?

A. I interviewed a great many of them personally.

Q. Employes were called in or come in more or less individually to your office?

A. Yes and no. At shift change time they would come in in considerable volume, and at other times—

Q. How did you interview them, individually or in groups?

A. I have done both. A good many of these, of course, are signatures to extension contracts and there is practically no interviewing in this case, unless there have been some questions. There have been questions raised as to how they can leave their money on deposit, or withdraw it, but generally there is not a great amount of ques-
2176 tioning on signing of extensions. Most of the questions are raised on the original signature.

Q. Prior to January 1, 1941, did you have any contact with the execution of the individual contracts?

A. I would not want to hold it to that exact date, but it was very close to that point, and before I was actually in charge of it I worked there is the contract office obtaining signatures to an amendment to all of the contracts cover-

ing bonuses, which was made effective on December 28th, and I signed up fifty per cent, I think, personally of those amendments, and in that case I went out in the plant in the majority of cases and went from machine to machine to get signatures. Those were signed up in many cases in groups, where a whole operation had to stop, and if there were maybe seven or eight people involved in the operation I would speak to the whole group at once.

Q. And if an employe did not come in after the first notice then you pinned a followup notice on his clock card?

A. We checked them off of this so-called followup list, and those that were not in at a point approximately three days before the time they would go into effect, we put a followup notice on their clock cards, or telephoned to the department heads, where there were only one or two missing from a department, and we asked for them to come in.

Q. How many additional followups did you make?

2177 A. As soon as that deadline had been passed for that particular group of contracts they were added to the new list for the next period, and we kept on until we either had some contact with them or had signed them.

Q. What do you mean put them on a new list?

A. Twice a month there is a list prepared of those eligible to sign new contracts and another list made of those whose contracts are expired and are to be signed for extension contracts.

Q. These contracts expire at various dates throughout the year?

A. Yes.

Q. There is no group of dates of say two or three days, at which all of the contracts expire?

A. No. It is not exactly evenly divided by any means. It is based on the time of their original employment, and the first group signed at three months and expires six months therefrom, or nine months, and then it is twice yearly thereafter.

Q. In departments contracts do not expire at the same time?

A. No, sir; it is timed entirely with the individual's employment, and if they are laid off for any reasonable length of time they have the option of canceling their

contract and obtaining their deposit, in which case they have to sign a new contract when they come back,
2178 and in that case they are entitled to sign a new contract immediately, and they do not have to go through this three-months probation period.

Q. Is the explanation given employes of the contract substantially like that that appears in the booklet Board's Exhibit Number 14, pages 16, 17, and 18?

A. Do you mean is the verbal explanation given employes substantially the same?

Mr. McRoberts: Are you questioning as to the contents of the contract or—

Trial Examiner Ruckel: The explanation.

Mr. Evans: The explanation that is made to the employe when he is asked to sign a contract.

Mr. McRoberts: I mean are you asking for an explanation of the contract or their duty or obligation to sign the contract?

Mr. Evans: If that is included within the matters—

Mr. McRoberts: I object unless the question is made clear as to what it is directed to.

Mr. Evans: I have shown him the material.

Trial Examiner Ruckel: Read the question.

(Question read by the reporter)

Trial Examiner Ruckel: Will you clarify that, Mr. Evans?

Mr. Evans: I do not believe the question needs any clarification. This is the explanation that is pub-
2179 lished to the employes, and I am merely asking him if this is substantially the same explanation that is made to employes when you talked to them individually.

Trial Examiner Ruckel: As to the advantages and reasons why it is requested?

Mr. McRoberts: I object to any testimony with respect to that because it is immaterial to any issue in this case and we are not charged with having misled employes as to the interpretation of this contract, I take it, and yet that is what the presumed purpose of this testimony is about, and it is to show there is some conflict or disagreement between this explanation and counsel's interpretation of the contracts. The contracts speak for themselves.

Mr. Evans: Counsel is attempting to interpret that I am after. I think the question is perfectly obvious—

Mr. McRoberts: That is why I am objecting to it.

Mr. Evans: And I think the answer may save considable testimony, and it calls for a simple answer.

Trial Examiner Ruckel: I think he may answer. He is not called on to interpret the contract. He is asked if the explanation or the exposition of the contract as contained in this booklet is given substantially to the employe when he is asked to sign it.

Mr. McRoberts: Mr. Examiner, he is asking this witness to testify about various conversations he has had
2180 with employes, are those conversations substantially the same as contained in this booklet, and the purpose of that, and the only conceivable purpose, is to show employes were told something about the contracts contrary to what is in them that violates or is contradictory of the contracts themselves, and, therefore, the Company is guilty of something in doing that. I do not know what that has to do with this Labor Board hearing.

Mr. Evans: If the explanation is what counsel intimates it is contract to what is in the contract, and such would be a fact.

Mr. McRoberts: If it is contrary it is inadmissible, and if not contrary it is not admissible.

Trial Examiner Ruckel: What is the materiality?

Mr. Evans: The materiality is merely to carry out what is stated in the booklet in the individual interviews, if such were the fact.

Mr. McRoberts: What is stated in the booklet—which were put out long before the charges in this case by the Labor Board were filed.

Mr. Evans: What is contained in the booklet is obviously what the Company wants the employe to know about the contract, and that is why they put out the booklet, and I am asking if the employe is told the same thing when he comes in to sign it.

2181 Trial Examiner Ruckel: I think the witness can take care of himself, and he may answer.

Mr. McRoberts: It is not a question of the witness taking care of himself, but a question of the admissibility of the testimony.

Trial Examiner Ruckel: We will hear it.

A. In the answer to the question I could not say yes or no, Mr. Evans, but it is essentially the same information

that is given, with this consideration: There are many employes who come in and know all about the contracts, through relatives and otherwise, who ask no questions and want no explanation and say "I know all about it" and sign immediately.

There have been others who want a detailed explanation of every single article that is in there, and in those cases they have been gone over in that fashion.

I remember one particular case where the man's chief contention was whether or not the contract limited him at his present rate of pay for the term of the contract, in that he had been promised a raise within a certain period, and he wanted to be sure that the contract did not prevent him from getting the raise.

Another thing I can recall a man had a patent which he was working on during his spare time and he wanted to know how that was affected.

2182 In every case the questions that are raised by the individuals are not similar, so it would not be true to state it is substantially as given to every individual, but the general information is there, plus any additional information that they want. Does that answer your question?

Q. Were the employes who were interviewed concerning the contracts during 1941 informed as to what rights, if any, they had to join a union or engage in concerted activities?

A. I can recall several conversations that I had with employes from the smokeless powder area where the question of signing the individual contract was raised. I do not recall anyone ever asking the question of whether or not belonging to any organization had anything to do with the contract.

Q. As far as you explaining to them how it would affect in any way their rights?

A. I don't recall having explained to anyone such a point.

Q. Did the explanations to the men in the smokeless powder division come after the election in May 1941?

A. No, I believe my conversations with them would have all been prior to that time.

Q. What explanations did you give to the employes in the smokeless powder in that respect?

A. They did not ask anything about organizations or unions.

Q. What did they ask about?

2183 A. One individual said that he did not like the individual contract and I told him that—

Q. Who was this individual?

A. Francis Bunzy.

Q. Did he say why he did not like it?

A. He thought that it was a one-way contract, and I told Mr. Bunzy that I did not believe that it was a one-way contract, and I pointed out the various clauses in there that protected the Company and the clauses which also protected the employes. We discussed the matter of the bonus or the saving clause. We discussed also the secrecy clause, or the patent clause, and the one on rates, which also covers in the same clause, I believe, the desire of the Company to have permanent employes and it gave to the employes assurance that the Company wanted to keep them as employes as long as there was work to do, but it did not guarantee them a job for a year, but they had that assurance as long as the Company had work for them it would carry on.

Q. Was that your interpretation?

A. That is exactly what I told him and discussed—I would not say that was the exact words, and that was carried on in the smokeless powder division.

Q. Was there anything with respect to concerted activities or unions involved in that conversation?

2184 A. Mr. Bunzy did not raise that question.

Q. Or any of the other employes in the smokeless powder division?

A. No sir.

Q. There were no conversations with employes in the smokeless powder division with respect to the execution of these contracts during which you explained to them the effect, if any, of the individual contract on the right to join unions or engage in concerted activity?

A. I believe you will find my answer was "no" to that question.

Trial Examiner Ruckel: The answer I think was "No".

A. That is the way I recall answering that question as far as that particular item was concerned.

Q. I am sorry. I misunderstood you. I believe it was testified to that all except two employes of the smokeless powder division had signed these contracts and they were in effect at the time of the hearing in the Representation case last April.

A. You mean in that case—

Q. Yes.

A. That it was testified in that case?

Q. Yes. Do you recall that?

A. I was in attendance on a good many of the meetings there.

Q. Was that a fact?

2185 A. I think that testimony was all the eligible employes.

Q. Now, the rest of the plant, how many employes during 1941 except the temporary employes who had been there less than three months, had not signed and have not signed individual contracts?

Q. You mean at the present time or during the year?

Q. During the year, yes.

A. That would vary somewhat during the year. If I recall it correctly I made a check at the time of the hearing to determine—

Q. The Representation hearing?

A. Yes—to determine how many were not signed that were eligible, and my recollection is we found four in total.

Q. That was for the entire plant?

A. That is right. I think that should be modified slightly, because I have since learned and have investigated the fact there were some fifteen or twenty individuals who were eligible but for some reason or another had not had a notice to come in and sign, and some of them had raised the question as to why it had not happened, but it was just a slip in the operations.

Q. In other words, there were only four that refused to sign?

A. That is right.

Q. And the others were because of a slip they had

2186 not been notified?

A. Yes; as I say, there might be some additional

ones outside of that, but in checking the contract department records there were only four.

Mr. Evans: That is all.

Trial Examiner Ruckel: Any questions?

Mr. McRoberts: That is all, Mr. Irish.

Trial Examiner Ruckel: That is all.

(Witness excused.)

ELMER R. KLAUS,

called as a witness, by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. McRoberts) State your name, please.

A. Elmer R. Klaus.

Q. Where do you live, Mr. Klaus?

A. 2400 Alby Street, Alton, Illinois.

Q. Where are you employed?

A. Western Cartridge Company.

Q. How long have you been employed by the Company?

A. Eight years.

Q. What is your position with the Company?

A. I am chief clerk in the casting shop office.

Q. Mr. Klaus, what position do you hold with the
2187 Independent Union?

A. Recording Secretary.

Q. How long have you held that position?

A. Since December 8th, 1941.

Q. 1941?

A. Yes sir.

Q. You succeeded Mr. Richard Harting?

A. Yes sir.

Q. Who has left the employ of the Company?

A. That is right.

Q. Mr. Klaus, as secretary do you have charge of the membership records of the Independent Union?

A. Yes, I do.

Q. Have you, at my request, examined those records so as to determine the number of members of the Independent Union on June 1, 1941?

A. I did.

Q. Will you state how many members there were in the Independent Union who had been admitted to membership, paid at least one month's dues, had not resigned, and were still employed by the Company on June 1st, 1941?

A. We had a total membership of 3382.

Q. Did you have an opportunity to bring that membership list down to date?

A. No, I haven't, Mr. McRoberts.

2188 Q. Can you give me the approximate number as of this time?

A. When it started—

Trial Examiner Ruckel: Now.

Q. As of this date.

Mr. Evans: What is the materiality of that? I object to it.

Trial Examiner Ruckel: What is the materiality?

Mr. McRoberts: Here is an active union, operating, and defending this case, and I think it should be of interest to you what proportion of the present employes are now represented.

Trial Examiner Ruckel: He may answer.

Q. Do you know the approximate number at this time according to the records?

A. We have approximately 3600, and I believe it is 43 or 44 members.

Q. Is that as of today?

A. No, sir; this month there will be 67 new members taken in that are not on our records as yet.

Q. And they should be added to the total that you have just given?

A. Yes sir.

Mr. McRoberts: That is all.

Cross Examination.

Q. (By Mr. Evans) How long have you been chief
2189 clerk in the cast shop office?

A. About three years.

Q. Do you have persons working under your supervision?

A. I have six boys in the office with me.

Q. What do they do?

A. They are scale men. They work shift work.

Q. They are paid on a monthly basis or hourly basis?
A. They are paid on hourly basis, too.
Q. The cast shop is part of the brass mill?
A. Yes sir.
Q. That is the same division that Mr. Chapman is in?
A. Yes sir.
Q. How did you become secretary-treasurer?
A. I was asked if I would take the job since Mr. Harting resigned. I am not a board member, and am just employed as recording secretary, and I keep their books.
Q. You are not then a representative or advisory committeeman?
A. No.
Q. You were not elected by the membership as a whole?
A. No.
Q. You are merely appointed by the Board?
A. Yes.
Q. How did you arrive at the figure of 3382 members on June 1, 1941?
2190 A. Our members are all kept in individual card records and I went through the card records that are on file in our office over there.
Q. What was the basis for your accepting or rejecting the cards? In other words, how did you arrive at the fact they were members?
A. By payment of their dues.
Q. Those who were currently paying dues at that time were considered members, is that it?
A. Yes.
Q. Those who were not—
A. We had approximately about a hundred and some members that were about three or four months behind in their dues at that time.
Q. Any that were longer behind than that in their dues you did not consider in arriving at the figure?
A. No.
Q. How did you arrive at the fact they were employes of the Company?
A. We have them according to the divisions, and we have a record on each individual over there, as to where he works, and that is how I determined that—from what department he was in.

Q. You had nothing to do with the books until December 8, 1941?

2191 A. That is right.

Q. You do not know whether they are accurate as of June 1st, 1941 or not?

A. No, I couldn't say.

Q. You do not know who kept the records at that time? Who made these records?

A. At that time, I believe, there was a girl in the office that kept the books.

Q. You took each card, examined it and decided whether or not that was the card of a member, and accepted it or rejected it, is that it?

A. Yes. All of our records over there, the members in good standing are kept in a file, and that is how we know they are good members and they work for the Company. When a member leaves the Company the card is immediately taken out of there and marked on there, and if deceased it is marked on the card, and if he left the Company it is marked.

Q. Where do you get the information?

A. If deceased, they call the Secretary, and that is how we have a check on that.

Q. Who calls?

A. Any member of the union calls them and informs them as to that fact.

Q. (By Trial Examiner Ruckel) And tells you what?

2192 A. That there is a death of a member of our Association, and we investigate.

Q. What about someone leaving the employ of the Company?

A. The only record we have of that is if the member had not come in and paid his dues as an active member, then we write him a letter and verify may be what happened, and that is the checkup we have on that stiuation.

Q. Do you check with the Company?

A. No, sir; we check with the individual and we do not check with the company. Then the wage assignments, that tells us immediately he has left the Company when his dues stop coming in.

Q. Almost all the members have wage assignments?

A. Yes, the majority of them have.

Q. (By Mr. Evans) These recordings are made from the list which the Company furnishes?

A. Yes.

Q. Each month?

A. Yes.

Q. As having wage assignments?

A. Yes.

Q. You have no copies of the wage assignments?

A. No, we don't. We have a blank card which tells us on that card whether it is a wage assignment or cash for our records that we keep over there for each individual.

2193 Q. And that information is obtained from the individual, is that right.

A. Yes.

Q. Did this number include employes in the smokeless powder division?

A. We have a few there, yes.

Mr. Evans: Mr. Examiner, I would like to ask at this time the witness bring over the cards for the purpose of making a check.

Trial Examiner Ruckel: Will you do that this afternoon, Mr. Klaus?

A. We have four big drawers of them in a filing cabinet.

Mr. Evans: They are not very bulky, and they are just little metal filing cabinets.

Mr. McRoberts: You have already examined them, haven't you, Mr. Evans.

Mr. Evans: I have looked at them, but I didn't count them. Mr. Chapman and I looked at a large number of them.

Trial Examiner Ruckel: They can be carried by one or two men, can they?

The Witness: Two men can bring them over, yes.

Trial Examiner Ruckel: Will you do that the early part of the afternoon. Any further questions?

Mr. Evans: I have no questions until after I check the cards.

2194 Trial Examiner Ruckel: Have you any questions?

Mr. McRoberts: Not until Mr. Evans finished at least.

Trial Examiner Ruckel: Off the record.

(Discussion, off the record.)

Trial Examiner Ruckel: We will recess until 1:45.

(Thereupon a recess was had until 1:45 o'clock P. M. on January 7, 1942.)

2195 After Recess.

Thereupon at 1:45 o'clock P. M. on January 7th, 1942, the hearing was resumed, pursuant to recess.

Trial Examiner Ruckel: The hearing will be in order, please.

EARL JONES,

called as a witness, by and on behalf of the Respondent, having been previously sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. McRoberts) Mr. Jones, you have previously testified in this case, I believe?

A. Yes, sir.

Q. I believe I called to your attention, Mr. Jones, the testimony of one or more witnesses to the general effect sometime in 1937 you told them to go to the office and sign up with the union, and that one or more of these witnesses said he saw you talking to the employes with a list of names of employes; I believe I asked you about that on previous examination?

A. Yes sir.

Q. I believe you said you did not tell anybody to go to the office to sign up?

A. That is right.

Q. Did you have occasion in 1937, and other times, to
2196 occasionally go to employes in your department with a list of employes in your hand; and if so, for what purpose?

A. That was to sign the individual contract.

Q. Tell us just what sort of a list you would get and what you would do?

A. They would send me out a list of men, probably three or four, and sometimes it would be two and maybe it would be five, and sometimes I would send them down to the service department office and sometimes I would send them to the brass mill office, and Joe Brandt was in charge of that until he left the Company, and McCauley was there

after that, and sometimes Kratschmer would take care of it, and I would send them one at a time.

Q. You would take this list and go around to the employes and send them down to sign up their individual contracts?

A. That is right.

Q. Would you send them down after the original contract or extension or both?

A. About two weeks before their contract was due they would sign another one, and they could leave it with the Company or take it.

Q. Mr. Jones, are you able to tell us at this time the names of all of the employes who worked on your shift in your department back in 1937?

2197 A. No, sir, I couldn't do that.

Mr. McRoberts: I think that is all.

Cross-Examination.

Q. (By Mr. Evans) Was this more or less a continuous process, every day or so you would have these lists?

A. It used to be several of the fellows worked there, their contract came due on April 15th, and along about the last of March I would have probably a list of men, if they were on my shift, to get them to sign the contract.

Q. Then your recollection is it was in March 1937 this occurred?

A. Yes, because I had one myself that was due on the 15th of April and there were several of the fellows worked up there did.

Q. Do you recall having any list in June or July 1937?

A. I had a list this week for two fellows.

Q. I am talking about June or July 1937, Mr. Jones.

A. I didn't have any in June or July, I believe, because most of the fellows in the cast shop their contract was due in April.

Q. Didn't the Company usually clip a card on the man's time card when the contract was due?

A. They never did mine. I don't know about others.

Q. How about employes under you?

A. They would leave a note on my desk and some-

2198 times they would leave it in my mail box or send it up by the clerk downstairs, this contract was due and to sign the contract.

Q. The list, you mean that would be a followup matter on the individual contracts after the employe had failed to come in following the notice attached to his time card?

A. I don't know about that.

Q. How big are these lists?

A. Sometimes it would be three names and sometimes four and sometimes five. It would just depend on how many were on the shift.

Mr. Evans: That is all.

Mr. McRoberts: That is all.

Trial Examiner Ruckel: No questions.

(Witness excused)

FRANK KRATSCHMER,

called as a witness, by and on behalf of the Respondent, having been previously sworn, was recalled and testified as follows:

Direct Examination.

Q. (By Mr. McRoberts) You have testified before in this case?

A. That is right.

Q. You were a clerk in the brass mill office, I believe?

A. Yes.

2199 Q. I believe I asked you when you testified whether you ever had men come in and took their applications to join the Independent Union?

A. That is right.

Q. You testified you did not?

A. No.

Q. Your answer is no, you so testified, or no, you did not sign them?

A. I didn't sign them.

Q. You didn't sign them?

A. That is right.

Q. Did you have occasion in 1937, and thereafter have occasion, to have men sent in to you by Mr. Earl Jones to sign individual contracts?

A. Can I make my interpretation of that, and I don't know Mr. Jones especially, and I don't want to involve him—there have been occasions when they called up and they have sent contracts in, and would send up lists. They

would come up there, and so on, and I would get them on the shift, and if he was on a different shift, he would get his shift and then he would stop in the office on the way out.

Q. You would send the list of men and the foreman would send them in to you?

A. I have done that.

Q. And you would sign them individually?

2200 A. Yes—or either pay them the check.

Q. Sometimes it would be a check that was due?

A. Sometimes it would be a check that was due and they would have to sign as received.

Mr. McRoberts: That is all.

Mr. Evans: That is all.

(Witness excused)

JADY B. CHAPMAN,

called as a witness, by and on behalf of the Respondent, having been previously sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. McRoberts) Mr. Chapman, you have testified before in this case, have you not?

A. I have.

Q. You are Chairman of the Independent Union at the present time?

A. I am.

Q. When did you become Chairman?

A. In August 1940.

Q. You followed Cletus Baker as Chairman?

A. I did.

Q. Mr. Chapman, I will ask you during your term as Chairman of the Independent Union who has conducted and directed the activities and affairs of the Union?

2201 A. The Executive Board of the Union.

Q. Has any outsider undertaken to participate in those affairs or give any directions with respect to them or interfere in them?

A. No sir.

Q. Particularly has any representative of the Western Cartridge Company during your connection with the Inde-

pendent Union ever taken any part in the activities or affairs of the Independent Union except the collective bargaining negotiations?

A. No sir.

Q. To your knowledge, during your connection with the Independent Union has the Union received any financial support from the Company?

A. No sir.

Q. (By Trial Examiner Ruckel) That you know of?

Q. That you know of.

The Witness: He asked for my knowledge.

Mr. McRoberts: That is all.

Cross-Examination.

Q. (By Mr. Evans) Mr. Wiseman was your attorney for a while?

A. He was.

Q. When you were Chairman?

A. Yes.

2202 Q. Did you ask the Company representatives to permit Mr. Wiseman to sit in on some of your joint meetings while talking about contracts?

A. Not during my time; he was in the year previous to that; it was the year previous to that.

Q. Wiseman was your attorney up to June of 1941, is that correct?

A. Yes sir.

Q. You were Chairman from August 1940?

A. Yes.

Q. From August 1940 to June 1941 did the executive board ask the Company to permit Wiseman to sit in on the negotiations at any time?

A. No sir.

Q. He never did sit in on the negotiations, did he?

A. No sir.

Q. Do you know why that was?

A. I can't say why it was. There were times I remember we would have him sit with the Board down at our office at 106 West Main Street before we went down there.

Q. (By Mr. McRoberts) By "there" you mean—

A. Down to the Western, to present certain demands.

Q. (By Mr. Evans) At any time did you discuss the matter of having Weisman go with you to joint meetings?

A. We discussed it amongst ourselves.

2203 Q. What did you decide?

A. I don't think we ever took it to the Company.

Q. Did you decide to ask the Company to permit Wiseman to sit in and later did not ask the Company?

A. I don't think we did.

Q. You paid Wiseman a retainer fee, did you?

A. We did.

Mr. Evans: That is all.

Q. (By Trial Examiner Ruckel) Why didn't Mr. Wiseman represent you in negotiating with the Company?

A. You mean why didn't he go down with us?

Q. Yes, what were the reasons for not having him?

A. He appeared to be very busy and we didn't pay him a great deal of money and I presume that was the reason.

Q. Was the matter ever discussed by the Executive Board?

A. It was.

Q. What were the reasons? You say you presume those were the reasons. What reasons were stated at the Executive Board meetings?

A. Mr. Wiseman wasn't available to us at all times.

Q. You mean he was never available to you on those occasions when you went to talk to the Company?

A. That is what I mean.

Q. He was available to you some times just prior to your going over to talk to the Company?

2204 A. That is right.

Q. But he never happened to be available actually when you went over there, is that it?

A. Yes sir.

Trial Examiner Ruckel: That is all.

Q. (By Mr. McRoberts) Did anybody from the Company ever tell you you could not have Mr. Wiseman there if you wanted to?

A. No.

Mr. McRoberts: That is all.

Q. (By Mr. Evans) Did you get for me the financial re-

port of the union in the spring of 1938 that I asked you to bring over in connection with the fee of Manning?

A. I don't remember you asking for that. It is available, though.

Q. You can go over now and get those, can you?

A. Yes sir.

Q. Do you remember a question came up as to payment of Manning's fee, and I want the financial reports during that period so I can show in the record what balances you had from month to month during that period.

A. Yes.

Mr. Evans: That is all.

Mr. McRoberts: That is all.

Trial Examiner Ruckel: That is all.

(Witness excused.)

2205 Mr. McRoberts: I expect Mr. Schotters and Mr. John Olin and Mr. Spencer Olin here momentarily, and I have another witness who was told to come in at three o'clock, and I have another witness who I can get on telephone call, who will be very brief, but I doubt whether we can get him before these other witnesses arrive. I will testify further in this case and perhaps now would be a good time.

R. H. McROBERTS,

called as a witness, by and on behalf of the Respondent, having been previously sworn, resumed the stand and testified as follows:

Direct Examination.

I have been sworn and testified before in this case.

With respect to the testimony given by the witness Fred Olds on page 37 of the record, I have already testified that I was present at the meeting on or about August 14, 1941, which Mr. Olds referred to. There were present on behalf of the Company Mr. Spencer T. Olin, Mr. Schotters and myself, and present on behalf of the union Mr. Olds, Mr. Van Vaerenewyck and Mr. Blume. In the course of the meeting, and my recollection is toward the end of it, Mr. Olds made the statement, in a rather facetious manner—

Mr. Evans: I move to strike it.

Trial Examiner Ruckel: It may stand.

The Witness: He made a statement something to the
2206 effect this may sound funny, or strange, or queer, but if you let us go in there and organize the plant that will dispose of the difficulties or settle the controversy, and would the Company permit them to do that; and he was told by Mr. Schotters, as I recall it, that the Company would not permit him or his associates to go in the plant for that purpose.

I cannot recall the exact language which Mr. Olds used, but it was my understanding what he was referring to was—

Mr. Evans: I object to what he thought was being referred to.

Trial Examiner Ruckel: He may answer.

The Witness: What he was referring to was a request for him, Mr. Blume, Mr. Van Vaerenewyck and similar organizers for the American Federation of Labor to be permitted to go in the plant and organize. As I say, I do not know when he referred to them whether he said "let us" or "let me", or what the exact wording was, but it was a very definite understanding that he was referring to such men as himself—

Mr. Evans: I move to strike out the very definite understanding, as he admits he does not remember what was said.

Trial Examiner Ruckel: It may stand.

The Witness: My understanding of the conversation
2207 and the meaning of his request was based in part upon his statement that he had made to me before that time, and which was repeated in that meeting, with respect to the group of employes who he or his associates or members of the American Federation of Labor had already signed up in the proposed union.

That is all.

Trial Examiner Ruckel: What is the materiality of it? I do not recall now Mr. Olds' testimony.

Mr. McRoberts: Mr. Examiner, it goes to the merits of Mr. Olds' testimony, and I take it Mr. Olds' testimony was offered for the purpose of showing a denial on the part of the Company to the members of the American Fed-

eration of Labor employed by the Company to solicit in the plant. The materiality of the testimony is to show that was not the request, there was no denial and certainly it was not the understanding of the Company's representatives.

Trial Examiner Ruckel: You mean your understanding was that someone not employed there be permitted?

Mr. McRoberts: Yes, the request was he be permitted to go in and Mr. Blume and Mr. Van Vaerenewyck, representing the American Federation of Labor, not employed by the Company, and that request was denied.

Cross Examination.

Q. (By Mr. Evans) You did not ask for whom he
2208 was asking or making this request?

A. No. I do not recall that I participated in that particular part of the conversation. My recollection is the request was directed to Mr. Schotters and was denied by Mr. Schotters, although I did do most of the talking apart from that, as I have a habit of doing.

Q. Regardless of the meaning or understanding, which apparently was not specified, the Company would not have granted a request to allow employes to go in and organize?

A. Are you asking me that question or stating a fact?

Q. I am asking a question.

A. The answer to that is this, so far as I know and so far as my advice to the Company would have been if that question has been asked, that employes of the Company were not then being refused and had never been refused the right to solicit membership in any union during working hours, on company property, so long as it did not interfere with their job. If a request had been made for such permission they would have been given that answer, and I, as attorney for the Company, would have advised the Company to give such an answer.

Q. Would such advice be contrary to the provisions of the individual contract, where it states the employe promises to devote his entire time to the work of the Company during working hours?

2209 Trial Examiner Ruckel: Any further testimony?

Mr. McRoberts: I take it that question does not call

for an answer. I will be glad to answer it if you or Mr. Evans wishes it.

Trial Examiner Ruckel: "Entire" is a very exclusive word. Anyway, it never happened.

A. I will answer that question the individual contract had never been construed by the Company as prohibiting such activity and to my knowledge that has never been done and is not now being done.

Mr. Evans: The point is this, that this business of what they understood and what not is so susceptible to being an afterthought and given for the purpose of explaining away what actually occurred, this is the reason why I have gone into this hypothetical situation.

The Witness: I might state, Mr. Examiner, that Mr. Olds has told me on different occasions as to the large number of employes whose applications have been received and according to that there has been no restraint upon their signing of employes by members of the union working for the Company.

Q. You mean Mr. Olds has told you that—that there has been no restraint from the Company?

A. No, I didn't say that.

Q. I thought you started off by saying that.

2210 Trial Examiner Ruckel: Where are we getting? Is this material or are we filling in time until some witness comes?

Mr. McRoberts: I am prepared to step down from the witness stand and resume my capacity as attorney, such as it is, when Mr. Evans is through with me.

Mr. Evans: The witness being on the stand and being an attorney, I naturally have to break in his testimony and arguments and objections and things like that.

Trial Examiner Ruckel: Any further questions of Mr. McRoberts?

Mr. Evans: No, I have no further questions.

Mr. McRoberts: I have no cross-examination of myself.

(Witness excused.)

Trial Examiner Ruckel: We will be in recess for ten minutes.

(Ten-minute recess then had.)

Mr. McRoberts: May I withdraw Mr. Chapman and substitute Mr. Olin, so he may get away?

Trial Examiner Ruckel: The witness may be withdrawn.

JOHN M. OLIN,

called as a witness, by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. McRoberts) State your name, please.

2211 A. John M. Olin.

Q. You live in Alton, Illinois?

A. Godfrey Township.

Q. What is your position with the Western Cartridge Company?

A. Vice-president.

Q. And director?

A. Director.

Q. How long have you been connected with the Company, Mr. Olin?

A. Since 1913.

Q. How long have you been a director and vice-president?

A. Since 1921, I think.

Q. Mr. Olin, what was your first connection with the Western Cartridge Employes Independent Union?

A. As I recall, in June 1937, Otis Sullivan, an employe of the Company that worked in the receiving department, came to my office in the absence of my father and notified me there had been an organization formed.

Q. Did he present to you a letter at that time?

A. Yes.

Q. I will show you Respondent's Exhibit Number 26, and ask you if that is a copy of the letter which he presented to you?

A. It is.

Q. What other conversation did you have with Mr.

2212 Sullivan at that time, very briefly?

A. I more or less listened to him. There was not very much conversation upon my part.

Q. He told you they had this union and wanted recognition?

Mr. Evans: I object to counsel leading the witness.

Trial Examiner Ruckel: Objection sustained. Tell what was said.

Q. Tell, briefly, what Mr. Sullivan said.

A. As I recall, he told me that an organization had been formed, presented this letter, which is addressed to the President of the Company, which is self-explanatory, and in the discussion of that matter with Sullivan he further told me they had selected an attorney; he told me the number of applications which they had for membership, what the dues were, and there were certain other applications which had been secured but not yet returned, and they planned to hold a meeting during the coming week to formally organize the union and hold an election of officers.

Mr. Evans: The witness is apparently reading from a document already in evidence.

Mr. McRoberts: Is there any objection to that?

Mr. Evans: What is that adding to the testimony already in?

Trial Examiner Ruckel: You can refresh your memory, if necessary, from any memorandum you have.

2213 Q. Is that your recollection of the conversation?

A. Yes, in substance. He went on further then, saying it was under the Wagner Act, and so forth and so on. I didn't discuss the matter at any great length, because I intended to refer the matter to our attorney, which I later did.

Q. Did you do it by letter?

A. I did it by letter.

Q. Is that Respondent's Exhibit Number 27 the letter to which you refer?

A. That is correct.

Q. You sent that to Senator Williams?

A. Yes.

Q. What happened thereafter, Mr. Olin, in connection with this matter?

A. After that we, of course, had discussions with our attorney upon the subject. The fundamentals of the matter are really delineated in this letter, because there were

certain features related to individual contracts which we had entered into which seemed to me have important consideration with any collective bargaining arrangement with anyone.

Q. Following these discussions, and after the union had adopted its formal organization, did you receive other demands from the union?

2214 A. Yes. As I recall it, we received a written demand from them.

Q. I show you Board's Exhibit Number 9 and ask you if that appears to be a copy of the written demand to which you refer?

A. Yes, it is.

Q. Following the receipt of that did you refer that matter also to your attorney, Senator Williams?

A. Yes.

Q. Did you participate in any discussions with Senator Williams regarding the basic agreement, which was later executed?

A. Yes.

Q. Did you attend a meeting on August 12, 1937, at which the basic agreement was signed by representatives of the Company and representatives of the Union?

A. I did.

Q. Thereafter did you engage in collective bargaining as representative of the company and representatives of the Independent Union at certain of their meetings?

A. Yes, I did, for a limited period of time. By that I mean several months.

Q. Thereafter those negotiations were carried on primarily by other representatives of the Company?

A. That is correct.

Q. Mr. Olin, there has been reference in the testi-

2215 mony in this case to certain forms of individual contract which were used by the Company in its relations with certain of its employes. Are you familiar with those contracts?

A. Yes.

Q. And the history of their use by the Company?

A. Yes.

Q. Mr. Olin, it is alleged in the complaint in this case that the Company solicited and obtained said promises,

referring to the contract and certain provisions of the contract, from its employes in order to impede, discourage and defeat orderly processes of collective bargaining with its employes, and to encourage, develop, and force upon its employes inequitable processes of individual bargaining and further in order to discourage membership in any labor organization among its employes and to interfere with, restrain and coerce its employes in the exercise of the rights guaranteed them in Section 7 of the Act. I will ask you whether or not the individual contracts were used for such purpose?

A. Never.

Q. When were the individual contracts first used by the Company? Approximately.

A. As I recall, originally either in the year 1914 or 1915. I think probably 1915. The contract had its inception as a document between individual employes and the Company—

2216 Q. Who prepared the first draft of your contract, by the way?

A. Frederick W. Lehmann, former Solicitor General of the United States.

Q. How long, approximately, did you continue to use these individual contracts?

A. They were used continuously until we hit the depression after the world war, and I think it was late 1921 or 1922, or around there, and then, because of shrinkage in employment, they were discontinued.

Q. These individual contracts as initially used contained a commitment on the part of the company to employ the employe for a definite length of time, did they not?

A. They did.

Q. In the depression you quit using them?

A. Yes.

Q. After that when did you begin to use such contracts again?

A. 1933.

Q. What was the occasion for reviving the use of these contracts at that time, Mr. Olin?

A. It was the same influence that occurred in the original use of them; we wanted to stabilize our working force and promote saving and promote minimum of turnover

and to help our employes in the relationship with the Company.

2217 Q. Was there anything that occurred in that year that particularly called the use of the contracts to your attention?

A. No, the only thing I can recall which had any influence upon my mind, according to my recollection, was the beginning of the N R A process and the regulation of business, and so forth, which seemed to mean a stabilizing of our affairs, and in view of—what shall I call it?—the propaganda which was emanating on that subject, it seemed to me we desired to get a little closer to our employes than we were, than submitting them and subjecting them to all the press propaganda that was coming out on that subject. I might say I have never been an enthusiast on N R A or anthing of its ilk.

Q. There is some reference to a strike in the record, but it is not clear when that strike occurred? Was there a strike with the Company?

A. It was a sporadic disturbance.

Q. What year was it?

A. In the summer of 1934.

Q. Did that shut down the plant?

A. No, it did not affect it at all.

Q. Approximately, how many employes were involved?

A. 35.

Q. 35 out of several thousand?

2218 A. Out of about 2200, as I remember it.

Q. The strike last for several weeks?

A. There was a picket line established, and really the difficulty which existed was to restrain employes that were working from going out and beating up the picket line.

Q. In other words, there was this minor strike in 1934?

A. That is correct.

Q. And you had revived the use of the individual contracts approximately a year before that time?

A. Yes.

Q. And continued to use the contracts from then on down to the present time?

A. That is correct.

Q. And you are using them in all departments of the

East Alton plant except the smokeless powder division, now operated by the East Alton Manufacturing Company?

A. That is right.

Q. Why are you not using them in the East Alton Manufacturing Company?

A. Because of the outcome of the hearing before the National Defense Mediation Board.

Q. Briefly, did you cease to use it there at the request and demand of the American Federation of Labor or because you yourself wanted to cease using it?

A. Because of the proceedings before the National
2219 Defense Mediation Board. I have never quite understood whether that was the demand of the American Federation of Labor or Mr. Wyzanski. I think there was a relationship between both.

Mr. Evans: I move to strike the witness' conclusion.

Q. You mean there was a relationship between the demand of the American Federation of Labor and the position by the National Defense Mediation Board?

A. On that subject Mr. Wyzanski sought to put our Company in an embarrassing position—

Mr. Evans: I move to strike it.

The Witness: That is a matter of record.

Trial Examiner Ruckel: Finish your answer.

A. Seeking to place the officers of our Company in an embarrassing position, representing the American Federation of Labor had notified him further negotiations were useless unless we conceded these contracts should be abolished.

Q. Later there was a difference of opinion between the representatives of the Company and Mr. Wyzanski as to what position he had taken?

A. That is correct, and because we did not come back to the meeting in the afternoon he then sought to change his position and say that was upon his own motion.

Q. And not upon motion of the American Federation of Labor?

Trial Examiner Ruckel: Is there a motion to strike?

Mr. Evans: I move to strike it.

2220 Trial Examiner Ruckel: It may be stricken.

Q. Can you tell us a little more why the Company has used these individual contracts in its dealings with employes if it was not for the purposes alleged in the

complaint? You have already told us something about that.

A. The fundamental objective, of course, is to stabilize our employment.

Q. How does the individual contract stabilize employment?

A. It inculcates a spirit of saving among them, in that we promote to deduct a certain percentage of their wages, to which, if we do make that deduction, we then add a similar percentage, plus an added contribution of the Company, and at the end of their contract we promote them to leave that accumulated amount with the Company, which draws six per cent interest. It is clearly shown by that the purpose of that is to teach them to save, and we want them to save, so they represent regular and reliable and steady employes, and to purchase their own homes, if possible, in East Alton or those immediate surroundings around our factory.

Q. Has it operated that way?

A. It has operated that way. In many instances this is the first money the employe has ever saved.

Q. There are other provisions of the contract that probably speak for themselves. What about the pro-
2221 vision with respect to patents and inventions?

A. That is right.

Q. Becoming the property of the Company?

A. Yes.

Q. In the nature of your business you insist on that provision in your dealings with employes?

A. Yes; this business is one in which the competitive situation practically necessitates a close relationship with those who are skilled in the business.

Q. There is also a provision there respecting the secrecy of your operations?

A. There is.

Q. That has been there even before the problems of National defense made secrecy more important?

A. I might say there have been several attempts made to gain entrance to this plant, to purchase secret methods, and so forth, and the purpose of that is to legally preserve a secrecy between the employes and the Company with respect to this business.

Q. What also has been the position of the Company

with respect to having the employes come in individually and sign these contracts, instead of grouping some of the provisions in a general savings plan or rule which might be posted? Why has the Company continued to have the employes individually sign these contracts?

2222 A. For the same purpose. To make a better employe of him, so we may have contact with him, so any of his problems can be discussed, and any matters which relate to his employment which are not satisfactory to him, and so that he can, without fear, discuss those matters with proper officials of the Company.

Q. Has the Company ever taken the position in its dealings with its employes that by signing such contracts the Company cannot bargain collectively with any of their representatives?

A. None whatever, because it must be borne in mind this contract proceded the Wagner Act or any other similar act. We have never felt the contract is inimical to collective bargaining.

Q. Since 1937 you have bargained collectively with the Independent Union?

A. At length.

Mr. Evans: I move to strike that as a very definite conclusion.

Trial Examiner Ruckel: It may be stricken.

Q. Have you engaged in bargaining meetings between representatives of the Company and representatives of the Union?

A. Many times.

Q. In those meetings have you negotiated with re-

2223 spect to wages, hours and working conditions?

A. Yes.

Mr. Evans: Objection.

Trial Examiner Ruckel: He may answer.

Mr. Evans: He said he discussed them, and negotiated is another thing.

Mr. McRoberts: It is a distinction without a difference, isn't it?

Q. You discussed such matters, did you?

A. Yes.

Q. Did you from time to time come to agreement with respect to certain of them?

A. Yes.

Q. And put those agreements in force where you did come to agreements?

A. Yes.

Mr. Olin, has there ever been a rule of the Western Cartridge Company, so far as you know, prohibiting any employes from discussing union matters or engaging in union activities on company time and property?

A. Ask that question again.

Trial Examiner Ruckel: Read the question.

(Question read by reporter.)

A. No rule as such.

Q. What do you mean as such? Will you explain
2224 that, Mr. Olin?

A. That is a matter which must be interpreted by the rule of reason. If an employe spends all of his time discussing unionism he is not working as we employ him to work, and that is a matter which the Company has never legislated upon, because it is a matter which has been left to the rule of reason.

Q. So far as it does not interfere with employes' work; do you know of any instances where employes have been disciplined for mentioning union affairs or engaging in union activities?

A. No.

Q. In 1937, at the time the Independent Union was formed, did any of the Company officers, to your knowledge, make any speeches to employes, generally or individually, with respect to the formation of that union?

A. No.

Q. Or publish any bulletins telling the employes what their rights with respect to the Independent Union were, or anything of that kind?

A. None whatever.

Q. Has the Company ever contributed any financial support to the Independent Union?

A. None whatever.

Q. Has the Company ever permitted any outsiders,
2225 any people not employed by the Company, to come on Company property and solicit Company employes for any purpose?

A. Never.

Q. Union matters or otherwise?

A. Any matter.

Q. Mr. Olin, there is some testimony in this record to the effect sometime in 1941, in the summer, I believe, you attended a meeting, which you had called, of some of the employes of the Company, at which you asked them some questions about their attitude toward these individual contracts. Did you attend such a meeting?

A. Yes.

Q. Did you arrange for the calling of that meeting?

A. I did.

Q. Will you tell us, first, what the circumstances were which caused you to call that meeting, and the purpose of the meeting?

A. This was during the time that hearings were going on before the National Defense Mediation Board, and in the development of that hearing it was evident that the individual contract was a source of disagreement.

Q. Diasagreement in what respect, Mr. Olin?

A. Between the contending parties, the American Federation of Labor and the Company.

Q. In what respect?

2226 A. They wished to have it discontinued, and we did not wish to have it discontinued. Since the department involved, namely, the smokeless powder division, was the one in question, I asked the superintendent of that department to select a group of employes, without regard to membership in the union or otherwise, and at random, so they would get men who had positive viewpoints and were representatives of the group, and call them in so I might talk to them about the individual contracts and ascertain whether or not they themselves wished to maintain those contracts.

Q. Had you been advised before this meeting by your various supervisory officers as to the attitude of the employes themselves on these contracts?

A. The supervisors had told me the employes were unanimously in favor of maintaining those contracts.

Q. And you wanted to talk to the employes themselves?

A. I wanted to talk to them myself.

Q. And had this meeting, did you not?

A. I found—

Q. Not what you found but what did you say and what did the employes say, briefly, and in substance?

A. I discussed the matter with them of the contract in an intelligent and fair manner, to try to determine whether or not they did regard the contract as valuable and something which they wished to maintain, and I asked
2227 such questions as would promote answers to that question.

Mr. Evans: I move to strike the answer as a conclusion.

Trial Examiner Ruckel: Tell us what was said.

Q. Did you ask them what they felt, and what did they tell you?

A. I imagine there were some eight or nine employes and I was in that group and I carried on the discussion as you might carry it on in any group of that size, and this brought the discussion down to an individual discussion with each man present, and I asked him to express his view with respect to that contract, and I told him to be not fearful of anything he might say to me, because I was seeking an honest expression as to how that employe regarded the contract, that is, whether he regarded it as something valuable which he wished to maintain, or otherwise.

Q. What did the employes say?

A. I found practically unanimous approval of the contract and the expression of a desire to maintain it.

Mr. Evans: I move to strike the conclusion.

Q. Is that, in substance, what they said?

A. Yes, that is, in substance, what they said.

Trial Examiner Ruckel: It may stand.

Q. Mr. Olin, after the passage of the Wagner Act in 1935, and particularly after it was held constitutional in 1937, what instructions, if any, did you give to the
2228 supervisory employes with respect to interference in union matters or union activities on the part of employes?

A. We have told our supervisory force to respect the Wagner Act and to not interfere with the principles and language of that act.

Q. Does that refer to Mr. Dawson as one of the men you gave those instructions to?

A. Mr. Dawson was one of the men, yes, sir.

Q. Mr. Olin, without referring to your individual case,

which would be rather tedious, there are references in this record and testimony on the part of various witnesses to the effect that certain statements have been made by foremen or other supervisory employes of the Company derogatory to the American Federation of Labor or favorable to the Independent Union and statements of that character. Were any of those statements made with your knowledge or consent, or do you know anything about them?

Mr. Evans: Objection. Not competent.

Trial Examiner Ruckel: He may answer.

A. None whatever. I have issued no instructions or held any discussions upon that subject.

Q. Did you know anything about such statements at the time they were made?

A. No.

Q. The other executive officers of this Company con-
2229 sist of Mr. F. W. Olin, your father, as President?

A. Yes.

Q. Mr. Spencer T. Olin, your brother, who is secretary?

A. Secretary and Treasurer.

Q. The Board of Directors consist of those three men, together with Mr. Acker and Mr. Sydney de Kay?

A. That is correct, and our other executive officers such as Mr. Peterson, assistant treasurer, and Mr. Casteel, assistant secretary, as well as other assistant officers of that type at the New Haven branch.

Q. So far as your knowledge goes, did any of those officers or directors participate in or have any knowledge of any such statements on the part of your supervisory employes?

A. None that I know of.

Q. Prior to 1937, Mr. Olin, was there any organization of the employes of your Company—any labor organization?

A. None that I know of.

Q. Either an affiliated or independent organization?

A. We at all times have had some employes in our factory force that are members of various unions and the American Federation of Labor.

Q. In that connection, Mr. Olin, in your employment policies of the Company in employing new men and dis-

charging present men have you differentiated in any way between members of unions and non-members?

2230 A. None whatever.

Q. When you say some of your employes were members in various American Federation of Labor unions were there any locals in your plant, so far as you know?

A. No locals.

Q. Was there any independent union of any kind of an inside union of your employes prior to the Western Cartridge Employes Independent Union, so far as your knowledge goes?

A. None.

Q. Since you have been connected with the Company?

A. That is correct.

Q. Did the Company have an occasion to formulate any policy with respect to labor unions then prior to 1937?

A. No. There has been no policy with respect to labor unions at any time. It is a matter of employes choosing, and has been ever since the Company has been in existence.

Q. There have been efforts made from time to time during many years prior to 1937 to organize your employes?

A. That is correct.

Q. What has happened on those occasions?

A. It usually petered out.

Q. Did the Company have anything to do with them or any dealings with organizers?

A. We have met organizers at various times.

Q. Did they ever organize enough of your employes

2231 to ask your recognition and to bargain with you?

A. Not so far.

Q. Not prior to 1937?

A. That is right.

Mr. McRoberts: That is all.

Cross-Examination.

Q. (By Mr. Evans) Mr. Olin, between the period of 1922 to 1933 did you have any statement that the employes signed with respect to patents or confidential information, or anything of that kind?

A. Some of them, yes.

Q. Certain employes in key positions?

A. Yes.

Q. Laboratory employes and that sort of thing?

A. I could not answer that question specifically without referring to records, but certain types of employes have always signed agreements.

Q. That was during the period when you did not have the individual contracts?

A. Yes; and they still do sign them.

Q. Are those persons that are not within the categories of those who sign individual contracts?

A. Yes.

Q. During the period from 1922 to 1933 did persons who normally were covered by individual contracts sign
2232 such statements as to confidential information and patents?

A. I don't believe so. There may be a few exceptions to that, and I wouldn't know that without referring to the records.

Q. In 1933 did you call a meeting of the employes in the cafeteria?

A. 1933?

Q. Yes.

A. Yes.

Q. Was that before or after the individual contracts had been reinstated?

A. I do not recall whether it was before or after.

Q. What did you talk to the employes about at that time?

A. I talked to them about unionism.

Q. Tell us what you said.

A. I cannot recall everything I said on that subject.

Trial Examiner Ruckel: In substance.

A. Let me refresh my memory for a moment. The question was being agitated at that time as to whether or not the employes desired an affiliated union, a Company union, as it was so-called, or no union at all. That subject was being quite violently agitated throughout the entire force. The evidence seemed to indicate that the affilated union was practically in its entirety an influx of southern Illi-
nois coal mining influence, and that was the subject
2233 which I discussed with the employes. I was seeking to ascertain just what they desired, and there were many employes who said to me they did not want to

be pestered by that influence to the degree they were being bothered, and that was the object of the discussions with employes at that time.

Q. Did you discuss with them the possibility of forming an employes representation plan, or something similar to that?

A. Yes, I discussed with them the possibilities of that.

Q. What did you say in that regard?

A. I might explain to you we have at New Haven a Works Council plan, and have had for a great many years there, and that was the discussion which I had with them, whether they wished to have something of a similar nature to the New Haven plant.

Q. That was a type of plan where there was joint participation between employe and employer representatives in the affairs of the organization?

A. Yes.

Q. Wasn't it following this cafeteria meeting that the individual contracts were reinstated?

A. It was sometime during that year. As I recall the evidence that I secured at that time the employes were overwhelmingly opposed to an affiliated union. In
2234 fact they resented the agitation which was coming about from the particular group of employes who had found an influx into that organization, entirely ex-coal miners and residents of Southern Illinois. In fact there was a homely expression around the plant in which they referred to those boys as those from "down home", and there were a good many locally constituted around this part of the country who did not like the attitude of the "boys from down home."

Mr. Evans: I move to strike the voluntary statements as not responsive to any question.

Trial Examiner Ruckel: It may be stricken.

Q. Wasn't it during that year there was this strike?

A. No.

Q. Wasn't it during that strike that you held the meeting in the cafeteria?

A. No.

Q. What makes you place it as 1934?

A. Because that was the date of it.

Q. What makes you recall it was that year?

A. That happens to be the date of it. How else would I recall it?

Q. I do not know and I am just asking you.

Trial Examiner Ruckel: Do you associate it with any other event. You are speaking now of the strike, Mr. Evans?

Mr. Evans: That is right.

2235 Q. (By Trial Examiner Ruckel) Do you associate the strike with the occurrence of any other event?

A. No, I do not associate the strike with the occurrence of any other event.

Q. You just recall now it was 1934?

A. Yes. I recall the period about which this gentleman, whose name I do not know, is interrogating me; I can recall the period I was away in the summer of 1933, and by other events, and I know the subsequent situation at a later date.

Q. (By Mr. Evans) This agitation continued not only in 1933 but in 1934?

A. It culminated in the—

Q. It culminated in the strike?

A. In 1934; I think it was in 1934. The meetings in the cafeteria and so forth were in the summer of 1933.

Q. Did those meetings in the cafeteria cover all the employes, or substantially all the employes?

A. I think it was substantially all of the employes. It was an effort to find out what they sought and what they wanted. I would like to point out to you at all times this Company has been rather close to its working forces, we have known a great deal of their background and their record with the Company.

2236 Q. Had any union representative made any request of you prior to your holding meetings in the cafeteria?

A. None whatever. If you want the item there—I do not know what you are seeking, but I will fix the date for you so you will have it. I came back to this part of the country from the New Haven plant because of the death of my father-in-law and mother-in-law, and following their burial I went to this plant and found it in an uproar, and I then sought to find from people I have grown up with in this business what the uproar was about.

Q. The uproar was about a union, is that right?

A. It was about the unionism which was being agitated by those who had come from southern Illinois, which were coal miners who were out of work that period of years, who had been given employment in this locality and in this plant.

Q. You say your first knowledge of the Independent Union was in your talk with Mr. Sullivan?

A. Yes.

Q. That took place the latter part of June 1937?

A. That is correct.

Q. Tell us again what it was that was said by you and Mr. Sullivan at that meeting?

A. He brought in the letter which is attached to that exhibit and presented it to me, in the absence of my father, to whom it is addressed, and in that discussion I asked many questions which are reported in the letter to Senator Williams.

2237 Q. Have you any recollection as to what those questions were?

A. I simply asked the normal questions that one would ask on a subject of that kind as to what the organization was.

Q. What did he say?

A. He said it was a temporary organization, Western Cartridge Company Independent Union, and told me the number of employes that it constituted; some 1500 out of 2200, and they had some number of applications which were still not returned, and dues were twenty-five cents a month, these were temporary officers that had organized it, and they were going to hold a subsequent meeting to perfect a permanent organization.

Q. Was there any discussion with him at that time concerning individual contracts?

A. Yes. I told him I did not know what the Company's position could be in such a matter, because we had individual contracts with practically all employes who were eligible for such a contract, and necessarily before we could enter into any discussion with his union or any other union it would be necessary to find out what the status of those individual contracts would be in such discussion, and that is the reason why the matter was referred to our general counsel.

Q. Did you ask him if he had the individual contracts?

2238 A. I think I asked him that. I knew he had.

Q. Did you ask him what position the union intended to take on individual contracts?

A. I more or less presented the matter to him rather than asked him what position they intended to take.

Q. What do you mean by that?

A. The Company had the contracts. It was not a matter of what position the union intended to take over them, but the Company had the contracts and they were enforceable.

Q. Did you ask him whether or not the union intended to try to get rid of the contracts?

A. My presentation to him was we had the contracts and calling his attention to that fact, and whether an agreement could be entered into with his union or any other union that subject had to be studied.

Q. Did you have any further discussion with him at that time or at a later meeting?

A. We had later meetings with him. They brought their attorney at a later date, and we had our attorney, and his attorney discussed the contract.

Q. Did you have any conversations with Sullivan about it?

A. I do not recall any discussions with him individually. With this particular bill of particulars I was not particularly enthusiastic about the Independent Union.

Q. (By Mr. McRoberts) You are referring to

2239 Board's Exhibit 9, are you?

A. That is right.

Mr. Evans: I move to strike the voluntary statement.

Trial Examiner Ruckel: It may be stricken.

Q. (By Mr. Evans) Before signing the basic agreement on August 12, 1937, was there any discussion or consideration of the working agreement?

A. Yes.

Q. Was a draft of such agreement drawn up and presented by the Independent?

A. There were several drafts drawn up by their attorney and presented at various meetings.

Q. Before August 12th, 1937?

A. I do not recall that in detail.

Q. Do you recall whether any were so presented before August 12, 1937, or whether you presented any?

A. No.

Q. The basic agreement was the first agreement proposed, is that it?

Mr. McRoberts: Proposed by who, Mr. Evans?

Mr. Evans: By either party.

A. That followed discussion—

Mr. McRoberts: Just a moment, Mr. Olin. You ask that question in view of the fact your own exhibit says working agreement, Board's exhibit number 9?

2240 Mr. Evans: That is merely a list of demands.

Mr. McRoberts: It is called a proposed working agreement.

Mr. Evans: I am asking the question.

Mr. McRoberts: I know that.

The Witness: Let's get the question.

Trial Examiner Ruckel: Read the question.

(Question read by reporter.)

A. No, the first agreement proposed was a working agreement dated July 26, 1937.

Q. Were you at any meeting at which that was discussed?

A. Yes.

Q. When was that?

A. I cannot give you the exact date of it. It immediately followed the preparation of that document, I assume, we held a meeting with that union or representatives of them.

Q. Was there ever any document drawn up for signature which incorporated any such proposals as are incorporated in Board's Exhibit number 9?

A. As I recall, in discussion of that we held a meeting with them and discussed various items contained therein.

Q. Was any proposal written up—

Trial Examiner Ruckel: Any contract.

Q. —containing any of those matters?

A. I do not recall any proposal other than this one which was presented and the final working agree-

2241 ment which was signed.

Q. You mean the final basic agreement?

A. I mean the final basic agreement which was signed.

Q. On August 12. As far as you know there was never

any written agreement drawn up which covered any of the matters referred to in Board's Exhibit 9 prior to August 12th, 1937?

A. No. In explanation of that answer I would like to add it was apparent the individual contract was a matter which had to be disposed of in some manner before we could enter into an agreement with that union or any union, because that was a contractual relationship that existed.

Q. (By Trial Examiner Ruckel) You in the meantime had been advised by your attorney about the compatibility or lack of compatibility between the individual agreement and the agreement which the union was seeking?

A. That is correct. We were studying the contract in that light and our general counsel advised us that the contract was not incompatible with the signing of an agreement with this union, and we, therefore, proceeded to the negotiations.

Q. (By Mr. Evans) You mean the basic agreement?

A. Basic agreement.

Q. You mean your counsel advised you it was not incompatible with the basic agreement?

A. With the basic agreement or with any other
2242 agreement with any other union recognizing those contracts exist.

Q. Did you have any discussion in the summer of 1941 with any other groups of employes than the eight or nine about which you testified?

A. None.

Q. Who else was present when you met with those men?

A. Mr. Wortz.

Q. Superintendent of the Smokeless Power Division?

A. Superintendent of the smokeless powder line.

Q. Any other foremen or superintendents or officials?

A. No.

Q. You talked first in the meeting, did you?

A. I explained the object of asking them to come in to meet with me.

Q. You said then the Mediation Board was considering this matter and you wanted to call in these employes and talk to them about it?

A. That is correct.

Q. Did you tell them what you thought the benefits of the individual contracts were to the employes?

A. I told them the potential objective of the individual contract, its history and its purpose.

Mr. Evans: That is all.

Re-Direct Examination.

Q. (By Mr. McRoberts) Mr. Olin, was there an em-
2243 ployes representation plan worked out in 1933 following these meetings in the cafeteria?

A. No.

Q. Nothing came of it?

A. My interpretation of the opinion of the employes was they did not care for it.

Q. They did not want a representation plan?

A. Yes.

Q. You said something about some of the employes who were, as you described, from southern Illinois, agitating for some kind of union?

A. That is correct.

Q. What position were other employes taking on the matter?

Mr. Evans: I object to asking the witness' conclusion as to opinions of other employes.

Trial Examiner Ruckel: Objection sustained.

Mr. McRoberts: I have not gotten the basis of counsel's objection yet. I would like to know whether other employes were for or against it, in view of the statement of the witness.

Trial Examiner Ruckel: How can this witness know?

Q. Do you know, Mr. Olin?

A. Yes, I know.

Q. Will you state what position they took?

Mr. Evans: Objection. Conclusion.

2244 Trial Examiner Ruckel: Objection sustained.

Q. Did the employes tell you what their position was?

A. They did.

Q. What did they say?

Mr. Evans: Objection.

Q. (By Trial Examiner Ruckel) How many employes did you talk to and who? There were some employes

probably there who were not in favor of anything almost under the sun.

Mr. McRoberts: That is what I am trying to bring out. Here is a controversy in the plant and some want a union and some do not, and therefore, they were having a meeting.

Trial Examiner Ruckel: Isn't it always the case that some do not?

Mr. McRoberts: Is there any objection to proving it and getting it in the record?

Trial Examiner Ruckel: If you consider it valuable, yes.

A. I have already testified to the condition of the factory as I found it when I came back.

Q. (By Mr. McRoberts) You say there was an uproar or something of the sort. Were there contending factions?

A. There was a great deal of contention in the factory and employes were coming to me and asking that the agitation and interference with their work be stopped,
2245 and I then made it my business to go out in the factory, in the department, and talk to the employes individually and in groups to ascertain what the source of this conflict was.

Mr. McRoberts: I think that is all.

Mr. Evans: That is all.

Trial Examiner Ruckel: That is all.

(Witness excused.)

SPENCER T. OLIN,

called as a witness, by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. McRoberts) Will you state your name, please.

A. Spencer T. Olin.

Q. You are a brother of John M. Olin, who has just testified?

A. Yes.

Q. And the son of F. W. Olin?

A. Yes.

Q. Mr. Olin, you are secretary-treasurer of the Western Cartridge Company?

A. Yes.

Q. How long have you been with the Company, approximately?

A. Twenty years.

Q. Mr. Olin, there has been some reference to a strike on the part of your employes back in 1933 or 1934;
2246 do you recall when that strike was?

A. Yes; the early part of June 1934.

Q. Mr. Olin, did you attend a meeting in the dining room in the main office building on August 14, 1941, between representatives of the Company and representatives of the Molders and Foundry Workers Union, at which there were present Mr. Schotters and myself and yourself on behalf of the Company, and Mr. Fred Olds, Mr. Van Vaerenewyck, and Mr. Blume, on behalf of the Union?

A. Yes.

Q. Do you recall at that meeting some statement or request being made by Mr. Olds about being permitted to solicit members in the plant?

A. Yes.

Q. Will you state just what the request was and what answer was given?

A. This was along towards the end of the discussion and Mr. Olds said they could secure members in this Molders Union if they would be allowed to solicit them in the plant.

Q. Who would be allowed?

A. He had reference to the organizers.

Mr. Evans: I move to strike the conclusion.

Q. Who did you understand he was referring to?

Mr. Evans: Objection.

Trial Examiner Ruckel: He may answer.

2247 Q. Who did you understand he was referring to?

A. To himself or other organizers of that union.

Q. Did you understand he was referring to employes of the Western Cartridge Company?

A. No, not at all.

Q. The request was denied?

A. Yes.

Mr. McRoberts: That is all.

Cross-Examination.

Q. (By Mr. Evans) He did state in that meeting how many employes they claimed as members in that unit, did he not?

A. Yes.

Q. And that was a number slightly over two hundred?

A. Something like that.

Q. And that was just about all the employes you had in that unit, isn't that correct?

A. Not entirely. It was a good proportion of them.

Q. It was at least ninety per cent of them, wasn't it?

A. I could not say definitely on that.

Q. Didn't Mr. Olds say that he wanted for his union the same privilege that had been granted to other groups to solicit members in the plant?

A. There are two interpretations you can take to that question.

Trial Examiner Ruckel: Tell us what he said, as
2248 nearly as you can recall.

A. I understood him, and it was near the end of the discussion with reference to the Molders Union—I understood him to mean by that statement—

Trial Examiner Ruckel: What was his statement, and that is what we are trying to get at.

A. His statement, as I stated a moment ago, was "We could decide this question of membership very soon if we could solicit these men in the plant", and by that I understood him to mean outside organizers of the Molders Union, and that is exactly what I understood him to say.

Q. (By Mr. Evans) Didn't he say he wanted the same privilege that had been granted to other groups trying to organize employes?

A. That was not discussed at that meeting.

Q. Didn't he say that?

A. What privilege do you mean?

Trial Examiner Ruckel: Irrespective of what they were questioning, did he say something to that effect?

A. I do not recall any discussion on that point. That was just at the end of the conference. The discussion back and forth was very free. We understood exactly what the answer was on this matter of outside organizers soliciting employes inside of the plant.

Mr. Evans: I move to strike that.

2249 Trial Examiner Ruckel: It may be stricken. You have stated what he said and the interpretation you have placed on it.

Mr. Evans: No further questions.

Mr. McRoberts: That is all.

Trial Examiner Ruckel: That is all.

(Witness excused)

SAMUEL B. HILLER,

called as a witness, by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. McRoberts) State your name, please.

A. Samuel B. Hiller.

Q. Where do you live, Mr. Hiller?

A. I live at Alton.

Q. Where are you employed?

A. The East Alton Manufacturing Company.

Q. Before July 1941 were you employed by the Western Cartridge Company?

A. Yes sir.

Q. In the smokeless powder division?

A. Yes sir.

Q. How long were you with the Western Cartridge Company?

A. From the first day of May 1941.

2250 Q. You started to work May 1st, 1940?

A. Yes.

Q. What kind of work were you doing?

A. I started as an operator on what is called the 8300 mud house.

Q. What kind of work were you doing?

A. I am a supervisor's clerk in the yard office.

Q. When did you become a supervisor's clerk?

A. About the third day of July.

Q. You are not a supervisor yourself?

A. No.

Q. You just do the clerical work for a supervisor, is that right?

A. Yes sir.

Q. There is some reference in this testimony to your being solicited to join the American Federation of Labor, Chemical Workers Local Union?

A. Yes.

Q. Did you join that union?

A. I did.

Q. About when did you join?

A. About the middle of June.

Q. Had you been solicited to join that union before that time?

A. Yes sir.

2251 Q. Upon how many occasions and by how many different people were you solicited to join?

A. To be exact, I would not know.

Q. Was it a great many occasions?

A. Not a great many, no sir.

Q. Can you give us your best idea as to the number of occasions and the number of different people?

A. I would say a dozen times, by maybe a dozen different people.

Q. Solicited perhaps a dozen times by a dozen different people?

A. Yes sir.

Q. Where would you be solicited, Mr. Hiller?

A. I was solicited in the plant, in my job. There were men that came in to check what we call our pumps and they would merely talk to me about it while they were there.

Q. That is while you were doing your work and they would come in in connection with theirs?

A. Yes sir.

Mr. McRoberts: That is all.

Cross-Examination.

Q. (By Mr. Evans) Did you go around and question some of the employes about the individual contracts?

A. No sir.

Q. Did anybody ask you to do it?

2251a A. Oh, yes, I was—I will take that back—I was sent out to get a list of all I could get of members in the plant or workers in the plant—

Q. That is in the smokeless powder division?

A. Yes, on their opinion of the individual contract.

Q. Who asked you to do that?

A. The supervisor I worked with.

Q. What was his name?

A. William Shindel.

Q. Was the list you were to bring in those who favored the individual contract or merely to find out those who would state their opinion on the individual contract, or exactly what was it?

A. They were in favor of keeping the individual contract.

Q. (By Mr. McRoberts) Who was in favor?

A. The members that signed this slip that I had.

Q. (By Mr. Evans) At Mr. Shindel's direction you did go around and talk to employes?

A. Yes.

Q. Did you get a number of employes to sign the statement?

A. I had some, yes; four to be exact.

Q. How many did you solicit and get to sign that paper?

A. The entire 8300 line. That includes, I would say, about 25.

Q. The other 21 refused to sign?

2252 A. Yes.

Q. About when did this take place?

A. I would say the latter part of July or the first of August, sometime along in there.

Q. (By Trial Examiner Ruckel) Of what year?

A. 1941.

Q. (By Mr. Evans) Did you turn the list with four names on it in to Mr. Shindel?

A. Yes, I did.

Q. Did he say anything further about it?

A. No.

Q. Any other boss talk to you about it?

A. No.

Q. Did Mr. Wortz ever talk to you about it?

A. No sir.

Mr. Evans: That is all.

Mr. McRoberts: That is all.

(Witness excused.)

JADY B. CHAPMAN,

called as a witness on behalf of the Respondent, having been previously sworn, was examined and testified as follows:

Cross-Examination.

Q. (By Mr. Evans) Mr. Chapman, have you checked the records of the union back in 1937 and early 1938 for
2253 a financial statement which covers the balance on hand at the end of each period?

A. I checked it.

Q. Except for the bank balance you find no such figure, is that correct?

A. That is correct.

Q. You were not in on the business of depositing money at that time, were you?

A. I was not.

Q. When this discussion came up according to the minutes of the independent concerning the payment of Manning's fee are you able to state what balance was in the treasury at any particular time that discussion was before the union?

A. I don't think I understand your question.

Q. (By Mr. McRoberts) Can you tell from the bank statements how much money you had in the bank at different times there?

A. Yes.

Q. (By Mr. Evans) Aside from the bank statements you cannot tell what balance was on hand at any particular time, during that period, is that true?

A. No, sir, I don't know.

Q. You do not know whether the bank balances reflect the cash assets of the union at that time?

2254 A. I don't know.

Q. Can you tell from the records when it was that the wage assignments first began?

A. I can't tell by the records, but apparently it began in January 1938.

Q. That is the period that the bank statements show deposit of a large sum relatively early in the month, is that correct?

A. That is correct.

Q. Before that the deposits were scattered more or less through the month?

A. They were.

Mr. Evans: I think that is all with this witness.

Re-Direct Examination.

Q. (By Mr. McRoberts) Mr. Chapman, did you find the record showed a final payment on Mr. Manning's fee—any statement you had there a minute ago?

A. No.

Q. Did you find in your record a statement of paying $350.00 as payment in full?

A. No sir.

Q. Calling your attention to the financial report from April 4th to May 8, 1938, do you see an item there of Francis Manning, attorney, account in full, $350.00?

A. I see it.

2255 Q. Apparently from the records, that was the time when the final payment was made?

A. Apparently.

Mr. McRoberts: That is all.

Q. (By Mr. Evans) You checked your records, however, and found that was not the full amount according to your records that Manning was to get?

A. According to these records, he was to get $425.00 more, and they paid him $350.00.

Q. (By Mr. McRoberts) There had been some payments made before that on account of Mr. Manning's fee?

A. There had.

Q. Up to that time it showed they still owed him $425.00, is that right?

A. That is right.

Q. Instead of paying him $425.00 the record shows they paid him $350.00, and that was marked account in full, is that correct?

A. That is right.

Mr. Evans: That is what it says on the statement.

Mr. McRoberts: Yes.

Q. (By Mr. Evans) You do not know what it says on the check or whether that was actually the final settlement of the account?

A. I don't know.

2256 Mr. McRoberts: Might I ask, Mr. Evans, what is the purpose of this testimony initially in your inquiring about Mr. Manning's fee and what you expect to prove by that?

Mr. Evans: I think the record is clear on that.

Mr. McRoberts: It is pretty clear Mr. Manning was compelled to cut his fee and take something on account. If there is any significance attached to that we will have Mr. Manning come in and tell what took place. This witness was not a member of the union at that time.

Mr. Evans: He is only testifying from records.

Mr. McRoberts: I think that is all.

Trial Examiner Ruckel: Any further questions?

Mr. Evans: No further questions.

* * * * * * *

2271 P. W. DAY,

called as a witness, by and on behalf of the Respondent, having been previously sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. McRoberts) Mr. Day, you have testified before in this case?

A. Yes.

Q. Mr. William Elliott testified with respect to some conversations which he says he had with you respecting the Independent Union; on one occasion he testified—

Trial Examiner Ruckel: What page?

Mr. McRoberts: 498.

Q. On one occasion Mr. Elliott said you told him he had stuck you in the back and let him down. Did you ever make any such statement as that to him?

A. No. My conversation at that time was in regard to the fact he was trying to make me out as a damned liar.

Q. In what respect?

A. In regard to the agreement we had with the Independent Union.

2272 Mr. Evans: I move to strike the conclusion of the witness.

Trial Examiner Ruckel: It may stand.

Q. What was the conversation?

A. Will you ask the question again?

Q. What was your conversation at that time?

A. I told him he was interfering with his conversations with the people that the agreement with the Independent Union was not bona fide and we did not intend to live up to it, and that at no time could he show me where we had failed to listen to any grievances that had been presented in the proper manner.

Q. You spoke to Mr. Elliott on more than one occasion when the question of the Independent Union came up, did you, Mr. Day?

A. On one occasion I called Mr. Elliott to the office in regard to his activities, or rather his non-activities in connection with his representation as a representative of the Independent Union.

Q. What did you say to him about the Independent Union?

A. I told him at that time if he was going to be a representative I wanted him to be one, and if not I wanted him to get off the job and give somebody else an opportunity.

Q. Why did you make that statement?

2274 A. I told him I did not want to give the impression up there you couldn't settle any grievance, and I told him at the time the grievance was made it wasn't bona fide, and we intended to live up to our obligation to any employe, but he was trying to give the employes a different impression.

Q. Mr. Day, I will ask you with respect to Mrs. William Elliott, at the time she was let out or laid off, was she initially discharged or laid off, or what was your understanding of what was done? What was the initial Company position on the matter, when she was let out, was she discharged or what?

A. The initial position was I did not want her in the office and I sent her out of the office and discharged her from the office for the reason she was carrying too much information out of the office.

Q. Was she later reinstated?

A. To a different office.

Q. She was transferred to a different office?

A. Yes.

Q. She was off some days, a week or more?

A. Yes.

Q. When she was reinstated was she paid for the time she was off?

A. She didn't lose any compensation.

2275 Q. She didn't lose any compensation?

A. She was fired sometime ahead of the month and she was paid up to the first of the month.

Q. When she was reinstated and given another job was it the same pay?

A. Yes.

Q. The same kind of work, in a different office, is that it?

A. Similar; it was clerical work.

Q. It was clerical work?

A. Yes.

Q. And she is still employed by the Company?

A. Yes.

Mr. McRoberts: That is all.

Cross-Examination.

Q. (By Mr. Evans) Did Miss de Schweinitz take it up with you before she was reinstated?

A. She took it up with Mr. Schotters.

Q. You understood Miss de Schweinitz asked she be reinstated, is that it?

Mr. McRoberts: That couldn't be a conclusion or opinion you are asking for?

A. I discussed the matter with Mr. Schotters, and I didn't know what the agreement was; he asked me if it was possible to give her other employment and I told him if possible any other office.

2276 Q. What was this information that you mentioned she was divulging?

A. Production information.

Q. To who?

A. To who? To her husband.

Q. (By Trial Examiner Ruckel) What do you mean by production information?

A. Production figures; amounts produced.

Q. (By Mr. Evans) Did she say that or did you merely accuse her of that?

A. This was in the shape of information that came back

through her husband and the figures were quite exact and they couldn't have come back any other way.

Q. Couldn't he have gotten them from some other source?

A. Not very likely.

Q. Couldn't he have figured them up himself?

A. No. Confidential information she had no business taking out.

Mr. Evans: If the Examiner please, I move to strike the conclusion of the witness.

Trial Examiner Ruckel: It may be stricken.

Q. Her discharge followed William Elliott's?

A. Yes.

Q. You and William Elliott had quite a heated argument on that morning?

2277 A. I wouldn't call it heated, no. Bill is always kind of hot every time he talks.

Q. You get pretty hot, too?

A. Not particularly. It was simply a matter that I could not tolerate what he was doing, and that is all there was to it, and I put it up to higher officials to me if they wanted to put up with it I would do so, and I think subsequent information will show he talked to higher officials.

Q. You had a conversation with Mrs. Elliott when she came back?

A. Well, I don't remember any particular conversation. I probably talked with her several times.

Mr. Evans: That is all.

Re-Direct Examination.

Q. (By Mr. McRoberts) When was it these production figures were quoted by Bill Elliott in conversation with you?

A. To the foreman in the cast shop.

Q. Before he was discharged or afterwards?

A. Just about the time of his discharge. A little before, I believe.

Q. Do you know what the occasion for quoting those figures was? What was the argument about which he was quoting figures on? Did it have anything to do with wages or pay, or the amount he did receive, or what was it?

Trial Examiner Ruckel: What was it? What was it about?

2278 A. It was conversation he had with one of the foremen in regard to the volume of business the company was doing and the money they were making.

Mr. McRoberts: That is all.

Q. (By Trial Examiner Ruckel) And, therefore, the Company should be able to pay higher wages, is that right?

A. The amount they were getting out, and not on the amount they were spending, and he had no knowledge of that.

Q. I mean whether or not he was using these production figures to show an argument for higher wages?

A. That we had a big tonnage, we ought to pay higher wages.

Q. Was her discharge the same day as his discharge?

A. I don't remember exactly. Very shortly.

Q. Possibly that is in the record.

A. The records will show that. It was very shortly after that. I don't remember whether it was the same day or the next day.

Q. Her discharge was shortly after his?

A. Yes.

Q. (By Mr. Evans) What foreman was it that reported this matter to you?

A. A man by the name of Fecht; he is night superintendent.

Mr. Evans: That is all.

Mr. McRoberts: That is all.

EXHIBITS.

BOARD'S EXHIBIT 9.

July 26, 1937.

Mr. F. W. Olin,
President of the Western Cartridge Company,
East Alton, Illinois.

Re: Working Agreement.

Dear Sir:

We, the undersigned, Representatives of the Western Cartridge Employees Independent Union of East Alton, Illinois, respectively request that a conference be arranged between the undersigned and the representative, or representatives, of the company for the purpose of entering into a Working Agreement with the employees at the plant at East Alton, Illinois.

We respectively request that the following provisions be included in the Working Agreement, when same is drafted.

1 —Period of Contract—Six (6) Months

Period of Working Agreement—Six (6) Months.

2.—Existing Contracts—

Continuity of the existing contracts so far as applicable between the company and employees.

3.—Wages—

Fifteen (15) percent increase in wages.

4.—Hours of Employment—

That no employee be employed more than Forty-eight (48) hours in One (1) week. Any work performed over Forty (40) hours per week shall be at a "time and one-half

rate." Employees not to work more than Eight (8) hours in any one (1) day. To receive "time and one-half rate" for employment on Sunday. This provision not to apply to employees engaged in continuous operation.

5.—Vacations With Pay—

Employees in the continuous service of the company for a period of Two (2) years, or more, shall be entitled to a vacation of One (1) week, per year, with pay.

Employees in the continuous service of the company for a period of Five (5) years, or more, shall be entitled to a vacation of Two (2) weeks, per year, with pay.

That the rate of pay of employees engaged in "piece work" be gaged by the prior yearly average.

6.—Membership of Union.—

That the company engage only members of the Western Cartridge Employees Independent Union. That the company deduct the dues of the Union Members from their pay-check.

7.—Arbitration—

If at any time a dispute arises between the company and employees and no agreement can be reached satisfactory to both parties, the same shall be referred to an Arbitration Board, to be selected in the following manner. The Company to select Two (2) members and the Union to select Two (2) members. The Four (4) members selected to select a Fifth (5th) member and the decision reached by this Board shall be final and binding on both the company and the employees.

8.—Wages of Union Representatives—

No amount shall be deducted from the wages, or pay check, of the Representatives of the Union for any time that may be spent at a meeting or conferring with the company during the regular working hours.

9.—Use of Bulletin Boards—

That the Union be permitted to use the general departmental bulletin boards, located throughout the plant, for the purpose of notifying its members of meetings or elections.

10.—Seniority—

That the rule of seniority be invoked when general layoffs are necessary because of economic conditions.

11.—Grievances—

That arrangements be made between the company and the Union for the handling of grievances of the employees, either individually or collectively.

12.—Pay Days—

That employees be paid every alternate Friday.

Trusting that you will advise the Secretary as to the place, time and date that will suit the convenience of the company, we are

Yours very truly,

....

Secretary-Treasurer. Chairman

.....

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Copy

BOARD'S EXHIBIT 10.

The Basic Agreement.

The following is an agreement and compact made at East Alton, Illinois, on the 12th day of August, 1937, between Western Cartridge Company (referred to herein as the Company) and Western Cartridge Employees Independent Union (referred to herein as the Union):

1. It appearing that the majority of the Company's employees are members of the Union, the Union is recognized as the sole bargaining agent, under the National Labor Relations Act, with respect to all matters not covered by the contracts of employment between the Company and those of its employees who have made them. Both the Company and its employees have valuable rights under said contracts of employment which they desire to preserve, and said contracts are recognized as valid and binding upon both parties thereto. It is contemplated that, from time to time, demands and grievances will be made under this agreement with respect to matters not covered by the said contracts of employment. Such demands and grievances may be initiated either by the Company or the Union. Negotiations with respect to such matters will be conducted by the accredited representatives of the Company and the Union.

2. Neither the Company nor the Union admit or assert any right to change said contracts of employment without the consent of both parties thereto. However, the Company may, from time to time discuss with the Union matters which may involve changes in or modifications of said contracts of employment. If, from time to time, as a result of any such discussions, both the Company and the Union shall agree that any change or modification of the said contracts of employment shall be recommended to the employees holding such contracts, then the Company agrees to join with all employees, who shall accept such recommendations, in making such changes or modifications.

3. This agreement shall be in force for one year from this date and thereafter until terminated by written notice given thirty days in advance by either party to the other.

In Witness Whereof, the Company has caused its corporate name to be hereunto subscribed and its corporate seal to be hereunto affixed by its authorized Officer, and the Union has hereunto caused these presents to be signed by its duly elected and acting Representatives, on the day and year first above written.

Attested:
Spencer T. Olin
(Seal) Secretary

Western Cartridge Company
By F. W. Olin, Prest.

Western Cartridge Employees Independent Union, of East Alton, Illinois.

By:

Fred Plumb
Fred Plumb, Division #1

Virgil Keefe
Virgil Keefe, Division #2

Conrad Barkley
Conrad Barkley, Division #2

Clyde R. Mitchell
Clyde Mitchell, Division #4

Oliver Foster
Oliver Foster, Division #5

Berkeley Willmering
Berkeley Wilmering, Division #6

BOARD'S EXHIBIT 12.

(In ink: Signed by both parties Feb. 27-1941.)

Procedure for Cooperative Action to Remove Causes of Misunderstanding.

It is recognized that the right to hire and to discharge employees shall remain solely with the company. Acts of insubordination and violation of Rules and Regulations are prohibited and offenders are subject to discipline which may involve summary discharges.

However, should differences arise between the Company and a member of the Union, and should such differences be

on any cause, an earnest effort shall be made to settle such differences in the following manner.

First:

The aggrieved employee shall take the subject of his complaint up with the Department Head, individually, or jointly with the Union Representative. The Department Head shall carefully examine the subject in the light of the evidence presented by the aggrieved employee or Representative and shall take one of the following actions:

(a) Correct, if possible, the condition which caused the complaint.

(b) Explain fully to the aggrieved employee the facts, if any, which nullify or modify his complaint.

(c) Refer the case to the Division Superintendent for action or transmittal to the General Superintendent.

Second:

In the event that this procedure has failed to result in an understanding and should the employee have reason to feel that his complaint had not been fairly heard, he may either with or without a representative of the Union request and receive a conference with the Division Superintendent. All facts relative to the subject will be presented to the Division Superintendent. He will review the findings of the Department Head, if the subject has not before been referred to him and will explain the pertinent facts to the employee and if the employee desires it, the Division Superintendent will explain the decision in detail to the Union representative.

Third:

If further review of the subject appears desirable, either the Division Superintendent of the Company or the Division Representative of the Union may refer the matter to the Joint Committee composed of Union representatives and Company officials. Here all actions previously taken

shall be reviewed. After examination and discussion, one of the following actions is indicated.

(a) Approve or dismiss.

(b) Refer to Division Superintendent or Division Representative for further information.

(c) Refer to a committee composed of two Division Representatives of the Union appointed by the President and two Representatives of the Company appointed by the Company.

Fourth:

This committee will examine in detail all avaiiable evidence. They may call before them such employees or foremen as possess information or evidence which will aid them in their investigation. They shall prepare a written report of their findings which they shall present to the Joint Committee.

Fifth:

Any grievance that is not settled to the satisfaction of the aggrieved party within ten days of the date the complaint was made shall be referred to the Joint Committee for a final decision.

For the Western Cartridge Company	*For the Western Cartridge Employees Independent Union*
/s/ F. C. Haddleton	/s/ Orville Aughenbaugh
/s/ S. R. Irish	/s/ Richard Harting
/s/ P. W. Day	/s/ Arthur Tosh
/s/ E. Williams	/s/ Lowell Jones
/s/ F. A. Schotters	/s/ Geo. R. Hut
/s/ V. N. Crosnoff	/s/ J. B. Chapman

Procedure to Call a Meeting for
Collective Bargaining.

Meetings of Division Union Representative with Company Officials for purposes of collective bargaining shall be arranged in the following manner:

1. Either the Union, through its President, or the Company, through its General Superintendent, may request a meeting with all of the Union and Company Representatives for a stated purpose which must be a matter for collective bargaining.

2. The party requesting the meeting shall notify the other party, in writing, at least 72 hours, (excluding Saturdays, Sundays or Holidays) in advance of the requested meeting, stating:

(a) Time and place of requested meeting.

(b) Subjects to be presented for discussion and action.

3. The party receiving the request for a meeting, under these conditions, shall, within 24 hours, (excluding Saturday, Sundays or Holidays) notify the party making the request, of their agreement to the time and place suggested, or, offer an alternate meeting time and place which is acceptable to the party making the original request.

4. It shall be the responsibility of the Company to arrange for time off for Union representatives in order that they may attend meetings at the time and place agreed upon. Union Representatives shall not be penalized, in any way, for time spent in attending meetings, arranged in accordance with this procedure.

For the Western Cartridge Company	*For the Western Cartridge Employees Independent Union*
/s/ F. C. Haddleton	/s/ Orville Aughenbaugh
/s/ S. R. Irish	/s/ Richard Harting
/s/ P. W. Day	/s/ Arthur Tosh
/s/ E. Williams	/s/ Lowell Jones
/s/ F. A. Schotters	/s/ Geo. R. Hut
/s/ V. N. Crosnoff	/s/ J. B. Chapman

Conditions Under Which a Union Representative May Leave His Work, During Working Hours.

If a Union Representative is required to leave his work during working hours to attend a scheduled meeting with the Management, the Department Head of the Department in which the Union Representative works will be notified by the Management. The Department Head shall make such arrangements as are necessary to permit attendance at the meeting.

If a Union Representative has need to confer with a Representative of Management during working hours, he should request permission from his foreman. The foreman will immediately grant permission, when doing so does not seriously interfere with the work to be done. In any event, the foreman will notify the Personnel Manager of the request and the Personnel Manager will arrange for the conference without undue delay.

Both the Union and the Company recognize the danger of persons going from one department to another in the plant without authority. It is also recognized that in some instances a guide is desirable. Therefore in all instances where a Union Representative has need to visit any part of the plant on Union matters, the Personnel Manager shall arrange for the Union Representative to be absent from his work, visit the place requested and return to his work with a minimum of delay. The Personnel Manager, or some person designated by him, may accompany the Union Representative at any time on Company property. Employees will not be interviewed, during working hours, by the Union Representative unless arranged for before hand by the Personnel Manager and then only when to postpone the interview would result in hardship or an injustice.

For the Western Cartridge Company	*For the Western Cartridge Employees Independent Union*
/s/ F. C. Haddleton	/s/ Orville Aughenbaugh
/s/ S. R. Irish	/s/ Richard Harting
/s/ P. W. Day	/s/ Arthur Tosh
/s/ E. Williams	/s/ Lowell Jones
/s/ F. A. Schotters	/s/ Geo. R. Hut
/s/ V. N. Crosnoff	/s/ J. B. Chapman

PORTION OF BOARD'S EXHIBIT 14.

Employee Contract

After you have been in the employ of Western Cartridge Company for a period of three months, you will be eligible to sign an Individual Contract with the Company. The signing of such a contract is optional on your part. If you sign, you agree to perform faithfully the duties delegated to you by the Company through its superintendents or department heads, and to abide by the rules of the Company.

This contract also outlines procedure to be followed in case you invent or develop any products or process while in the Company's employ. The Company assumes that each employee desires to place his employment on a basis of permanence and security, and accordingly has provided an official channel through which inventions of employees can be brought to the attention of the Management, with assurance of a fair and friendly review of the invention or suggestion. The contract also contains a pledge that you will not divulge secret processes or other information which might result in financial loss to the Company.

To reward this spirit of co-operation on the part of the employee is one of the principal purposes of the Employee Contract. You are cordially invited to visit the Contract Office and ask for any explanations concerning the Employee Contract. Better still, ask the man who has one. Briefly, here are the advantages to you in signing the contract:

Without any further action on your part, the Company agrees to pay you, within three weeks after the completion of the contract, a sum equivalent to 2½% of your earnings during the life of the contract. The contract is renewable at its expiration date, thus remaining continuously in force if you so desire.

Or, as an alternate option on your part, you may authorize the Company to deduct from your wages a sum up to 4% of your total earnings, which will remain on deposit with the Company. The rate of this deduction authorized by you must be in even multiples

of ½ of 1%. The Company will pay you interest at 6% per year on this money which you deposit; will match the amount which you deposit; and, will pay you an additional 2% of your earnings. Payment by the Company under this option likewise is made within three weeks after the completion of the contract.

Example of Co-operative Option

If you decide to deposit the full 4% with the Company, you will receive upon completion of the contract a sum equivalent to 10% of your earnings on an annual basis, plus interest on your deposit, as follows:

Your own money returned.....4%
A sum to match your savings.....4%
Additional from the Company.....2%
Interest on your own deposit at 6% per year .....

You will note from the above example that of the total you receive, amounting to slightly more than 10% of your annual earnings you yourself provide 4%, while the Company pays 6%, plus a small amount of interest on your deposit which is calculated at the rate of 6% per year.

At the expiration of the contract you may withdraw the total amount due you, or when you sign an extension of the contract, you have the option of leaving all or a part of the money due you on deposit with the Company. On all money so deposited, you will receive at the end of each calendar year interest at the rate of 6% per year on the total amount on deposit, as long as it remains on deposit. Your money, when thus placed on deposit, can be withdrawn at any time thereafter on a few days notice sufficient to clear the payment through the Accounting Department.

BOARD'S EXHIBIT 15.

March 18, 1941

The Company and the employees of the Casting Dept. agree to abide by the following provisions for promotion provided the men eligible according to seniority have the proper mental and physical qualifications, a safe working record and have shown ability to follow instructions. The Company will abide by these principles in so far as the quality and quantity of metal produced is of high standard.

1. All instructions to the men to be given by the shift foreman. The shift foremen to be responsible for the work of the men.

2. The seniority ranking or date shall be based on the length of seniority in the Casting Shop. (Does not include Scrap Dept.) The same rules will be used that are used to award Service Pins.

3. A new employee hired from the outside does not have seniority until after one year. His seniority date will be that date one year after his hiring date. For example, a man hired 10-9-40 will on 10-9-41 start having seniority and his date will be 10-9-41.

4. A man transferred from another department with a year or more service shall have a seniority date starting on the day of the transfer to the Cast Shop. For example, a man transferred from the Finish Rolls on 10-9-40 after having been in the employ of the Company two years will have a date of 10-9-40.

5. A man transferred from another department with less than one year of service will not have any seniority until he has a total of one year service. His seniority date will be that date one year after his employment date.

6. When a man has worked his one year without seniority he cannot automatically displace a man of less seniority until an opening occurs. The management will give men without seniority the privilege of advancement in the same order as they will later be placed on the seniority list.

7. When an opening occurs the qualified men having the largest seniority will be given the opportunity to accept or refuse the job. The order of jobs will be Extra Caster, Caster, Mold Tender, Mold Scraper, Metal Tester.

8. When a man of higher ranking seniority is refused a job in preference to a younger man, the representative of the Union must show beyond a reasonable doubt the man is entitled to the job.

9. When the management wants to remove a man from the job they must show the Union representative beyond a reasonable doubt the man has failed on one of the following:

(a) Inferior quality workmanship, below average.

(b) Low standard of production, below average.

(c) Inability or refusal to follow instructions of foremen.

(d) Unsafe working habits.

(e) Violation of Company rules.

10. In case of lay-off men with the most seniority will be given an opportunity to qualify on any work in the Cast Shop. (This does not include the Scrap Dept.)

11. These department provisions may be modified if an agreement is negotiated by the Union and the Company and are not to be considered as a precedent for such negotiations for the entire plant.

12. The rate spreads for each occupation will be as follows:

Chill Mold Caster	.91 — 1.00
W. C. Mold Caster	.91 — .97
Chill Mold Tender	.81 — .87
W. C. Mold Tender	.75 — .81
Mold Scraper	.59 — .71
Metal Tester	.56 — .71

Mold Scraper and metal tester brackets raised to .71 in order to adjust each individual case in accordance with the men's ability to do other jobs. Detailed decision in regard to each individual will be made separate and it is not to be assumed that all Testers or Scrapers can go to the top unless they possess other qualifications which can be used to advantage of Company during their service as Metal Tester or Mold Scraper.

hb/

BOARD'S EXHIBIT 16-A.

Western Cartridge Company
Employment Agreement

Original Contract

This Agreement, Made this.....day of....., 19...., by and between the

Western Cartridge Company,

a corporation organized under the laws of the State of Delaware, as Party of the First Part and hereinafter called "Company" and .....of ....., Party of the Second Part and hereinafter called "Employee."

Witnesseth:

That For and in Consideration of the mutual covenants herein contained and of One Dollar ($1.00) lawful money of the United States in hand paid by the Company to the Employee, the receipt of which is hereby acknowledged, it is hereby agreed:

1. That for a period of six months, beginning..... ....., 19...., the Company agrees to engage the services of the Employee at such time and for such periods as in the discretion of the Company its business may require and it is understood that the Company shall have the right at any time during the period of this contract to reduce the number of employees by lay offs and that if Employee is so laid off he shall not be entitled to any wages during the period of any such lay off. The Company agrees to pay the Employee the prevailing rate for the class or classes of work that the Employee shall perform from time to time during the period of this contract. As a declaration of policy both parties hereto recognize the necessity for modifying wage rates to meet changes in economic and competitive conditions.

2. Employer agrees to pay one and one-half (1½) the regular wages to Employee for overtime work.

3. That the Employee in accepting said employment, represents himself to be in good physical condition, and agrees to devote his entire time and his best energies during working hours to the business of the Company; to well and faithfully perform the duties delegated to him by the Company, its Superintendents or foremen; to abide by the rules of the Company; to lend the utmost cooperation to the Company, its Superintendents or foremen, to the end that his efficiency and productiveness may be increased and the manufacturing cost of any work or article, upon which he may be engaged, decreased; and in all reasonable ways to advance the welfare and protect the interests of the Company.

4. That should any of the representations herein made by the Employee prove to be untrue, or should the Employee fail during working hours to devote his entire time and best energies to the interests of the Company, or fail to cooperate with or carry out the rules and the instructions of the Company, its Superintendents and foremen, or should his efficiency become impaired, or should he refuse to perform his duties as provided herein, this contract shall become null and void, and such Employee shall be subject to immediate suspension or dismissal, at the option of the Company.

5. That inventions and discoveries relating to the manufacture of ammunition, or any products made by this Company, or any appliances connected therewith, or applicable thereto, developed mentally or by research or experimental work carried on in whole or in part with material or apparatus, or at the expense of the Company, resulting from the efforts of the Employee during the term of his employment by the Company, shall be the property of the Company, and upon its request and at its expense, the Employee shall make full disclosure thereof, shall sign, acknowledge and verify all petitions, specifications, claims, powers of attorney, and other papers proper, convenient or necessary for the making of application for letters patent and the prosecution of said application, and will assign such inventions and discoveries and letters patent to be issued thereon to the Company; Provided, however, that

nothing in the foregoing shall be construed to prevent the Company from compensating or rewarding the Employee in any manner as may seem fit and proper to the Company for such inventions or discoveries.

Any inventions and discoveries made by Employee which are not covered by the foregoing paragraph shall be offered by Employee to the Company and the Company shall have a reasonable time in which to investigate such invention and discoveries and to negotiate with Employee for the purchase of same before Employee discloses or offers said inventions or discoveries to others.

The Company declares and Employee acknowledges that by action of the Board of Directors the business of the Company has been declared a secret business and Employee agrees not to disclose to others, not a party hereto, any of the trade secrets, detail of process of manufacture or equipment, or other information concerning or related to the Company's business.

6. Both parties hereto agree that on account of the experience necessary to satisfactorily produce the products of manufacture of the Company and to insure the maintenance of a high standard of quality of such products a minimum labor turnover is desirable and therefore, in consideration of the compliance by the Employee with the covenants upon his part above set out, the Company agrees to pay the Employee, in addition to the total earnings paid to him as provided in Paragraph #1 and #2 the following bonus, it being expressly understood that such bonus is to be paid only in the event Employee faithfully fulfills all his obligations under this agreement,

(a) Two and one-half percent (2½%) of the total earnings paid the Employee under Paragraphs 1 and 2, shall be paid the Employee within three weeks after the completion of this contract; provided, however, and it is hereby understood and expressly agreed, that upon the violation by the Employee of any of the covenants upon his part herein contained the bonus specified in this paragraph shall be forfeited forthwith.

(b) In lieu of the aforementioned two and one-half percent (2½%) the Company agrees to permit the Employee

to sign an order authorizing the Payroll Department of the Company to deduct from the earnings paid the Employee under Paragraphs 1 and 2, a sum up to four per cent (4%) in even multiples of one-half per cent (½%) of such earnings, which well be deposited with the Company, and upon which the Company will pay interest at the rate of six per cent (6%) per year, and the Company will match the amount so deducted and deposited plus an additional two per cent (2%) of such earnings, which together with the Employee's contribution outlined herein shall be paid the Employee within three weeks after the completion of this Contract; provided, however, and it is hereby understood and expressly agreed that upon the violation by the Employee of any of the covenants upon his part herein contained all of that amount to be contributed by the Company and specified in this paragraph shall be forfeited forthwith and only the money contributed by the Employee shall be returned to the Employee.

7. That Employee agrees to accept and be guided by and conform to the instructions issued or given by authority of the Board of Directors or Executive Committee or the Executive Officers of the Company, acting through or by its various managers, superintendents or foremen.

8. It is understood and expressly agreed that in the event the Employee fails to continue in the employ of the Company for the entire period of this contract, that the Company shall not be obligated to the payment of any bonus under Paragraph 6 hereof, and shall pay to the Employee only the amount deducted from said Employee's wages under Paragraph 6 (b) hereof.

9. That in the event of the non-operation, or the material curtailment of the operations, of the plant of the Company due to fire, flood, strikes, business depression, changing economic conditions, acts of God, or other causes beyond the control of the Company, this contract may be terminated by the Company; Provided, however, that in the event of the termination of this contract by the Company as outlined in this paragraph for any reason not due to the fault of the Employee, the bonus and deductions, if

any, as provided in Paragraph 6 shall become due and payable within three weeks after such termination.

10. If Employee is laid off, and if such lay off shall continue for six consecutive weeks or more, the Employee may terminate this contract, and in that event the Company shall, within three weeks after such termination by the Employee, pay over to Employee the bonus and deductions, if any, as provided in Paragraph 6.

11. That this contract may with the agreement and consent of both parties hereto, be amended, renewed, or replaced by a different contract, mutually satisfactory to both Employee and Company, at any time during the period thereof.

In Witness Whereof, the Company has caused its corporate name to be hereunto subscribed and its corporate seal to be hereunto affixed by its authorized Officers, and the Employee has hereunto subscribed his name as of the day and year first above written.

Western Cartridge Company,

By.....
Secretary.

.....
Employee.

BOARD'S EXHIBIT 16-B.

Western Cartridge Company
Employment Agreement

Extension Agreement

This Agreement, Made this.....day of....., 19...., by and between the

Western Cartridge Company,

a corporation organized under the laws of the State of Delaware, as Party of the First Part and hereinafter called "Company" and ..... of

....., Party of the Second Part and hereinafter called "Employee."

Witnesseth:

That For and in Consideration of the mutual covenants herein contained it is hereby agreed:

1. That for a period of one year, beginning..... ....., 19...., the Company agrees to engage the services of the Employee at such time and for such periods as in the discretion of the Company its business may require and it is understood that the Company shall have the right at any time during the period of this contract to reduce the number of employees by lay offs and that if Employee is so laid off he shall not be entitled to any wages during the period of such lay off. The Company agrees to pay the Employee the prevailing rate for the class or classes of work that the Employee shall perform from time to time during the period of this contract. As a declaration of policy both parties hereto recognize the necessity for modifying wage rates to meet changes in economic and competitive conditions.

2. Employer agrees to pay one and one-half (1½) the regular wages to Employee for overtime work.

3. That the Employee in accepting said employment, represents himself to be in good physical condition, and agrees to devote his entire time and his best energies during working hours to the business of the Company; to well and faithfully perform the duties delegated to him by the Company, its Superintendents or foremen; to abide by the rules of the Company; to lend the utmost cooperation to the Company, its Superintendents or foremen, to the end that his efficiency and productiveness may be increased and the manufacturing cost of any work or article, upon which he may be engaged, decreased; and in all reasonable ways to advance the welfare and protect the interests of the Company.

4. That should any of the representations herein made by the Employee prove to be untrue, or should the Employee fail during working hours to devote his entire time

and best energies to the interests of the Company, or fail to cooperate with or carry out the rules and the instructions of the Company, its Superintendents and foremen, or should his efficiency become impaired, or should he refuse to perform his duties as provided herein, this contract shall become null and void, and such Employee shall be subject to immediate suspension or dismissal, at the option of the Company.

5. That inventions and discoveries relating to the manufacture of ammunition, or any products made by this Company, or any appliances connected therewith, or applicable thereto, developed mentally or by research or experimental work carried on in whole or in part with material or apparatus, or at the expense of the Company, resulting from the efforts of the Employee during the term of his employment by the Company, shall be the property of the Company, and upon its request and at its expense, the Employee shall make full disclosure thereof, shall sign, acknowledge and verify all petitions, specifications, claims, powers of attorney, and other papers proper, convenient or necessary for the making of application for letters patent and the prosecution of said application, and will assign such inventions and discoveries and letters patent to be issued thereon to the Company; Provided, however, that nothing in the foregoing shall be construed to prevent the Company from compensating or rewarding the Employee in any manner as may seem fit and proper to the Company for such inventions or discoveries.

Any inventions and discoveries made by Employee which are not covered by the foregoing paragraph shall be offered by Employee to the Company and the Company shall have a reasonable time in which to investigate such invention and discoveries and to negotiate with Employee for the purchase of same before Employee discloses or offers said inventions or discoveries to others.

The Company declares and Employee acknowledges that by action of the Board of Directors the business of the company has been declared a secret business and Employee agrees not to disclose to others, not a party hereto, any of the trade secrets, detail of process of manufacture or equip-

ment, or other information concerning or related to the Company's business.

6. Both parties hereto agree that on account of the experience necessary to satisfactorily produce the products of manufacture of the Company and to insure the maintenance of a high standard of quality of such products a minimum labor turnover is desirable and therefore, in consideration of the compliance by the Employee with the covenants upon his part above set out, the Company agrees to pay the Employee, in addition to the total earnings paid to him as provided in Paragraphs #1 and 2# the following bonus, it being expressly understood that such bonus is to be paid only in the event Employee faithfully fulfills all his obligations under this agreement.

(a) Two and one-half per cent (2½%) of the total earnings paid the Employee under Paragraphs 1 and 2, shall be paid the Employee within three weeks after the completion of this contract; provided, however, and it is hereby understood and expressly agreed, that upon the violation by the Employee of any of the covenants upon his part herein contained the bonus specified in this paragraph shall be forfeited forthwith.

(b) In lieu of the aforementioned two and one-half per cent (2½%) the Company agrees to permit the Employee to sign an order authorizing the Payroll Department of the Company to deduct from the earnings paid the Employee under Paragraphs 1 and 2, a sum up to four per cent (4%) in even multiples of one-half per cent (½%) of such earnings, which well be deposited with the Company, and upon which the Company will pay interest at the rate of six per cent (6%) per year, and the Company will match the amount so deducted and deposited plus an additional two per cent (2%) of such earnings, which together with the Employee's contribution outlined herein shall be paid the Employee within three weeks after the completion of this Contract; provided, however, and it is hereby understood and expressly agreed that upon the violation by the Employee of any of the covenants upon his part herein contained all of that amount to be contributed

by the Company and specified in this paragraph shall be forfeited forthwith and only the money contributed by the Employee shall be returned to the Employee.

7. That Employee agrees to accept and be guided by and conform to the instructions issued or given by authority of the Board of Directors or Executive Committee or the Executive Officers of the Company, acting through or by its various managers, superintendents or foremen.

8. It is understood and expressly agreed that in the event the Employee fails to continue in the employ of the Company for the entire period of this contract, that the Company shall not be obligated to the payment of any bonus under Paragraph 6 hereof, and shall pay to the Employee only the amount deducted from said Employee's wages under Paragraph 6 (b) hereof.

9. That in the event of the non-operation, or the material curtailment of the operations, of the plant of the Company due to fire, flood, strikes, business depression, changing economic conditions, acts of God, or other causes beyond the control of the Company, this contract may be terminated by the Company; Provided, however, that in the event of the termination of this contract by the Company as outlined in this paragraph for any reason not due to the fault of the Employee, the bonus and deductions, if any, as provided in Paragraph 6 shall become due and payable within three weeks after such termination.

10. If Employee is laid off, and if such lay off shall continue for six consecutive weeks or more, the Employee may terminate this contract, and in that event the Company shall, within three weeks after such termination by the Employee, pay over to Employee the bonus and deductions, if any, as provided in Paragraph 6.

11. It is mutually agreed that this agreement is an extension of an agreement entered into by the Employee and the Company on....., 19...., and it is further agreed that the Employee shall have the right to withdraw all or part of the accumulated fund due him or, so long as Employee is employed on an hourly rate, leave on deposit with the Company with interest at the rate of 6% per an-

num all or any part of the accumulated fund due him on ....., 19...., which is the expiration date of the previous agreement.

12. That this contract may with the agreement and consent of both parties hereto, be amended, renewed, or replaced by a different contract, mutually satisfactory to both Employee and Company, at any time during the period thereof.

In Witness Whereof, the Company has caused its corporate name to be hereunto subscribed and its corporate seal to be hereunto affixed by its authorized Officers, and the Employee has hereunto subscribed his name as of the day and year first above written.

Western Cartridge Company,

By.....
Secretary.

.....
Employee.

BOARD'S EXHIBIT 22.

March 18, 1941

Regulations for Adjusting Rates of Finish Rollers.

1. The wage bracket:	Class A Roller	.83 — 1.00
	Class B Roller	.83 — .95

Class A rolls to be 5-6-8-9-10.

When a man has received roller training for 4 to 8 weeks and is capable of operating a roll without supervision of an extra roller, he will be paid 83¢ for such work. The rate will be increased 4¢ each time a roller is entitled to a raise. (.83—.87, .91—.95) All rate increases on the same occupation to be at least six months apart. Class A roller will receive a 5¢ increase to 1.00 when qualified.

All increases to be in accordance with the qualifications listed below.

2. Qualifications of a Class B Roller:

Capable of operating No. 7, 11, 12, 13, 15 or 16 rolls. To attain the maximum rate as outlined above the roller must be above average.

The production and efficiency averages will be based on each individual roll for the previous year.

The off-gauge will be based on all finished metal for the previous year. A roller must have finished 250 bars per month to have his off gauge considered as a factor. The present average is 2.0%.

The rollers' scrap will also be an important factor. When compared to the other rollers on the roll he must have an average rank of 1 or 2. All rollers within 300 pounds of the lowest will be ranked No. 1. The first roller having 300 pounds more than the lowest will be ranked No. 2 and all within 300 pounds of him will be ranked No. 2. No. 3 and No. 4 positions will be determined in the same manner in considering the record of the individual roller as well as other good or bad records on his personal record.

3. Qualifications of a Class A Roller:

His qualifications must be the same as those of a Class B plus the ability to operate on the same basis, 5 or 6, 8, 9, or 10. He must have at least 6 months experience on a Class A roll.

4. When a roller is below the qualifications outlined in paragraph 2 and 3 for a period of 3 months the management will review his case carefully and either warn him or remove him from the job.

After the Company has removed a man from the job the aggrieved employee may make his complaint in accordance with the procedure that has been agreed to by the Company and the Union.

5. In general each roll will be operated with a roller and two men. Extra men will be allowed as follows:

5 & 6 Rolls

An extra man all metal rolled to .032" or heavier.

Two extra men on 222 Mix. cast in the 76" or 80" mold.

An extra man on .032" soft if necessary to keep up production.

7 Roll

An extra man when running out of the water tub and all metal over 16" wide. A man will be allowed on all metal blocker over .028".

8 & 9 Rolls

An extra man will be allowed on all metal rolled .028" or heavier.

10 Roll

Two extra men on .050" and heavier.

Three men when needed—to be decided by the roll foremen.

11 Roll

An extra man out of the water tub and when placing metal on a pan over .028". An extra man to be allowed when finishing metal over .020" with a tolerance plus or minus .0005".

16 Roll

Two extra men from .050" to .033".

One extra man from .033" to .020".

One man on first pass of soft metal regardless of gauge, also when necessary to cut out bad edges on hard metal.

6. When any promotion is to be made Mr. Renken or Mr. McCalley and the roll foremen, or any other interested person, will be asked to advise on who should be selected for the next promotion. When these men have arrived at an agreement the Union representative will be asked to give his approval or disapproval. If he disapproves he must give definite reasons why and state who in his opinion should have the opportunity.

Seniority will be given preference, other conditions being equal. Before a man is eligible to receive roller training he must show that he has observed some of the principles of rolling. He should be able to read a micrometer, define A, B, C, finishes. He should have a reasonable knowledge of the pinches, B & S Gauges, and the water or oil control for the roll he has been working on.

7. The rate of pay for men being trained for rollers will be their regular rate unless the rate is higher than the maximum sticker rate, in which case his rate will be the maximum sticker rate.

8. The Company reserves the right to train men of previous exceptional training or men having a technical education. The management will not remove a roller on the job to make room for this man.

9. These department provisions may be modified if an agreement is negotiated by the Union and the Company and are not to be considered as a precedent for such negotiations for the entire plant.

RESPONDENT'S EXHIBIT 26.

Copy

East Alton, Illinois,
June 25, 1937.

Mr. F. W. Olin, President,
Western Cartridge Company,
East Alton, Ill.

Dear Mr. Olin:

This is to inform you that the employees of the Western Cartridge Company of East Alton, Illinois, have organized a Union, known as the Western Cartridge Employees Independent Union, for the purpose of contracting with the Western Cartridge Company on the question of wages, hours or other terms or conditions of employment, pursuant to the provisions of the Wagner Act, recently adopted by the United States Congress.

This Union represents considerably more than Fifty-one percent of the employees of the Company and we hereby demand that any contracts, or transactions, entered into with your Company pertaining to the above questions be transacted with the duly elected officials of this Union. As stated above, same represents a majority of the employees.

Temporary officers have been elected and the permanent officers will be elected in the very near future, at which time the legally constituted representatives of this Union will communicate with you setting forth the demands of the employees.

Respectively yours,

Howard D. Tueth,
Temporary Chairman,
520 4th St.,
Alton, Illinois.

Otis D. Sullivan,
Secretary & Treasurer,
124 Herman St.,
East Alton, Ill.

RESPONDENT'S EXHIBIT 27.

Address All Correspondence to the Company.

Western Cartridge Company
Western
World's Champion Ammunition
East Alton, Illinois

June 26, 1937.

Senator Geo. H. Williams,
Boatmen's Bank Building,
St. Louis, Mo.

Dear Senator:

Yesterday afternoon at 4:20 Otis D. Sullivan, an employee of the Company who works in our Receiving Department Stock Room came to my office and inquired for Mr. F. W. Olin and in his absence delivered to me a letter dated June 25th, copy of which is attached hereto. This letter is signed by Howard D. Tueth, an employee of the Brass Mill, and Otis D. Sullivan, as Temporary Chairman and Secretary and Treasurer respectively, of the Western Cartridge Employees Independent Union and is self-explanatory.

Mr. Sullivan told me that a Mr. Manning, an attorney in Wood River, Illinois, has been and is advising them with respect to the formation of this union in accordance with the Wagner Act as he understands it.

I also learned from Mr. Sullivan that 1500 cards constituting application for membership in this union together with the first month's dues of 25¢ have been received by the organizing group and that 2200 applications totally have been signed but the difference between 1500 and 2200 represents cards which have not been returned to the organizing group and payment of dues have not been made.

I further learned from Mr. Sullivan that it is the plan to hold a meeting during the coming week to formally organize the union and to hold an election of officers.

Having secured this general information from Mr. Sullivan, I then presented to him a problem after having asked him if he held an employment contract with the Company and receiving his affirmative answer I then asked him if there was anything in this union which, in his opinion, would nullify or modify or change the status of his contract with the Company and his answer was that he did not know. I then presented to him that it would probably be the Company's position in the first contact with the officers or members of this union that the Company held contracts with the bulk of its employees as individuals and that this represented an individual contractual relationship given to the individual employee and the Company by the Constitution of the United States and that it would be necessary for us to very carefully study the Constitution and By-Laws and acts of the union as related to or affecting these individual contracts. He then stated he would, he thought, give his individual contract to Mr. Manning to study and obtain his opinion as to the effect of the union upon his individual contract and this, I understand, he did last night.

I am accordingly presenting this subject to you for your study on Monday morning when you arrive at your office

for the purpose of receiving your advice as to what the position of the Company should be with respect to the situation which we have of a large number of individual contracts with employees and now having received a formal letter of notification of the intent to form this union what our course should be in dealing with this union and at the same time preserving the individual contractual relationship of the employees and the Company.

Having received this letter dated June 25th it would seem to me that it is not a violation of the Wagner Act for us to talk to either Tueth or Sullivan or any others interested in this union to present properly to them the Company's views with respect to the individual contracts we now hold with the bulk of our employees, or this discussion can be withheld until the constitution and by-laws are adopted and officers are duly elected and then carry on the discussion with the qualified representatives of this union.

It seems to me that our position must necessarily be that it is our desire to protect and to continue the constitutional rights of the employee as an individual and the Company as a corporate identity to enter into a contract such as now exists and that we must ask this contract be recognized and that all acts take due recognition of the existence of that contract and that if any action is taken which tends to modify, alter or amend the individual relationship or nature of the contract then that change should be reflected in the individual contracts. The determination must be made eventually as to how far we can go in collective bargaining and other relationships with this union and at the same time preserve the legal rights and position under the individual contract and on Monday we must determine whether we should raise this question now or let the entire matter rest until the constitution and by-laws of this union are adopted and its officers elected and then deal with the properly constituted officers and in dealing with them we should determine in advance our

position with respect to the preservation of the individual right of contract guaranteed by the Constitution of the United States.

I suggest that you telephone me on Monday after giving thorough consideration to this entire subject.

Yours very truly,

Western Cartridge Company
J. M. Olin
Vice President

J.M.Olin:W

Respectfully submitted,

R. H. McROBERTS,
1630 Boatmen's Bank Building,
St. Louis, Missouri,
Attorney for Petitioner.

BRYAN, WILLIAMS, CAVE & McPHEETERS,
1630 Boatmen's Bank Building,
St. Louis, Missouri,
Of Counsel.

Dated January 15, 1943.

UNITED STATES CIRCUIT COURT OF APPEALS

SEVENTH CIRCUIT

WESTERN CARTRIDGE COMPANY, a Corporation,
Petitioner,
v.
NATIONAL LABOR RELATIONS BOARD and AMERICAN FEDERATION OF LABOR and its Affiliated Organizations,
Respondents.
No. 8142. Civil.

Consolidated Causes.

WESTERN CARTRIDGE EMPLOYEES' INDEPENDENT UNION, Etc.,
Petitioner,
v.
NATIONAL LABOR RELATIONS BOARD and AMERICAN FEDERATION OF LABOR and its Affiliated Organizations,
Respondents.
No. 8155. Civil.

BRIEF OF RESPONDENTS AMERICAN FEDERATION OF LABOR and its Affiliated Organizations.

U. S. C. C. A. - 7
FILED
JAN 30 1943
KENNETH J. GARRIOR
CLERK

JOSEPH A. PADWAY and
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736 Bowen Building,
Washington, D. C.,
Counsel for American Federation of Labor and its Affiliated Organizations.

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NATIONAL LABOR RELATIONS BOARD and AMERICAN FEDERATION OF LABOR and its Affiliated Organizations,

Respondents.

No. 8155. Civil.

BRIEF OF RESPONDENTS AMERICAN FEDERATION OF LABOR and its Affiliated Organizations.

A STATEMENT OF THE FACTS.

These cases are before this Honorable Court on petitions for review of a Decision and Order of the National Labor Relations Board (hereinafter sometimes referred to as the Board) filed by the petitioners Western Cartridge Company (hereinafter sometimes called the Company) and Western Cartridge Employees Independent Union, etc. (hereinafter called the Company union), and on request for

enforcement of the Board's order made by the Board and by the respondent American Federation of Labor and its affiliated organizations (hereinafter referred to as the American Federation of Labor).

A full and detailed statement of the facts and the proceedings before the Board together with appropriate record references are contained in the brief for the National Labor Relations Board. We rely on no facts not set forth therein and any statement concerning the facts of the case which we might make at this point would be but repetitious and a burden upon the Court. We, therefore, refer the Court to the Statement of Facts in the Board's brief and adopt them as our own.

THE CONTESTED ISSUE.

There is but one issue involved in these cases, namely, should the Board's order be enforced. The order embraces three principal matters: (1) The contracts the company required its employees to sign individually; (2) the Western Cartridge Employees' Independent Union found by the Board to have been dominated and interferred with in its formation and (3) the discharge of William Elliott.

PROPOSITIONS OF LAW RELIED ON.

The American Federation of Labor relies in general upon the same propositions of law as are relied upon by the National Labor Relations Board. This brief is devoted to general statements concerning admitted facts and principles of law which are well established and accepted.

Individual contracts which thwart the policy of the National Labor Relations Act are appropriate subjects for affirmative remedial action authorized by Section 10 of the National Labor Relations Act.

National Licorice Co. v. N.L.R.B., 309 U. S. 350, 60 Sup. Ct. 569,

American Manufacturing Co. v. N.L.R.B., 309 U. S. 629,

N.L.R.B. v. Hopwood Retinning Co., 98 F (2) 97, and
N.L.R.B. v. Jahn & Ollier Eng. Co., 123 F (2) 589.

An individual no strike agreement violates the Act.

N.L.R.B. v. Jahn & Ollier Eng. Co., (Supra) and Bear Brand Hosiery Co., 40 N.L.R.B. No. 56.

It is indicative of company domination when a union bargains only on inconsequential matters.

N.L.R.B. v. Pennsylvania Greyhound Lines, Inc., 303 U. S. 261.

ARGUMENT.

I.

A. The Interest of the American Federation of Labor in This Cause.

The American Federation of Labor began an organizing campaign among the employees of the Western Cartridge Company in the latter part of 1940 (Supplement to Brief of Western Cartridge Company, page 27. Hereafter we shall refer to the supplement to the Brief of the Western Cartridge Company as Company's supp.), and sometime in the fall of 1941 it filed the charges of unfair labor practices against the Company, resulting in the Board's Decision and Order which are the basis of this case. (Company's Supp. pg. 1.)

As a result of its organizing efforts continuously engaged in since the latter part of 1940, and its campaign against the unfair labor practices of the Company, through the procedures of the National Labor Relations Act, the American Federation of Labor has succeeded in enrolling in its ranks approximately 7,000 of the Company's employees. The Company admits in its brief that thousands have been enrolled (see page 23). The American Federation of Labor

has filed a Petition for Investigation and Certification with the Board and an election is now pending having been ordered within 30 days from January 6, 1943, to determine the choice of bargaining representative of the employees (See National Labor Relations Board Case No. R-4688).

Because of the progress it has made in the organizing of the employees of the Company since the Board intervened to prevent the Company from continuing its discouragement of bona fide organizations and collective bargaining, the American Federation of Labor is vitally interested in this cause and the enforcement of the Board's Order. Its gains can be protected and retained and the employees of the Company can exercise their full rights under the National Labor Relations Act only if the Board's order which is being challenged in this cause is enforced.

B. Statement of the Scope of American Federation of Labor's Argument.

The Board in its brief has gone into a detailed analysis of the evidence of the case which supports its order, has stated and discussed the applicable law, and has fully answered the arguments of the petitioners. We shall not duplicate herein these efforts of the Board but shall confine ourselves to a few general observations concerning matters which involve no controversial facts and only well established and accepted principles of law.

II.

A. The Individual Contracts.

The individual contracts which the employees have been required by subtle means to sign have constituted one of the principal barriers to the organizing of the plant and cannot be continued in effect if the right to true and free collective bargaining is to be enjoyed by the employees. This is obvious from a cursory reading, or, at most, a simple analysis of the contract. Consider for a moment a few of the clauses in Section 3 of the contract (Company's

Supp. page 568). In this section the individual employee agrees "to lend the utmost cooperation to the Company" and "to advance the welfare and protect the interest of the Company." Now clearly a promise to lend the utmost cooperation to the Company deprives the employees of the right to lend cooperation to his union if his union needs the cooperation of its members to obtain some just demand. In the same vein, the welfare of the Company cannot always be advanced if union activities are to be engaged in freely for the welfare of the union is often diametrically opposed to the welfare of the Company. Further, to protect the interest of the Company in many instances would be to destroy the interest of the union.

A simple example is at once apparent. Let us take a hypothetical case of a group of employees in one department who are forced to do dangerous work without proper protection. Their appeals to the Company brings only the "take-it-and-like-it-or-quit" attitude. Could it not readily be held that concerted activity by the other workmen to help their fellow employees obtain relief is not lending the utmost cooperation to the Company and is advancing the welfare and protecting the interest of the particular group of employees in opposition to the welfare and interest of the Company in violation of the contract? Certainly it could, and particularly so in view of the fact that in debating the question of the "proper" interpretation of the contract and in determining whether or not the employee had violated the contract the individual employee's contestant would be his employer.

Other clauses in Section 3 and Section 4 of the contract are equally inimical to the purposes of the National Labor Relations Act. All oppose the fundamental basis of the Act, the elimination of the disadvantageous bargaining position of an individual employee in dealing with his employer through the encouragement of collective action. As clearly stated in Section 1 of the Act—

> "The inequality of bargaining power between employees who do not possess full freedom of association

> or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries."

The Act gives employees the right to engage in concerted activities for their mutual welfare and protection. The individual contracts involved in this case isolate the individual employees.

To return to the individual contracts, consider Section 6, the enforcement provision of the contract, cleverly separated from the employee's conduct obligations contained in paragraphs 3 and 4 by the long Section 5 dealing with patents. Under this Section 6 the employee loses all the bonus provided for in the contract if he fails to comply with the covenants contained in Sections 3 and 4 of the contract. So not only are the employees deprived of the right to engage in concerted activities by contract, but a penalty is provided if they dare to do so.

Section 9 of the individual contract (Company's Supp. pg. 571) is the most vicious of all. It reads as follows:

> "9. *That in the event of the non-operation, or the material curtailment of the operations, of the plant of the Company due to fire, flood, strikes,* business depression, changing economic conditions, acts of God, or other causes beyond the control of the Company, *this contract may be terminated by the Company;* Provided, however, that in the event of the termination of this contract by the Company as outlined in this paragraph *for any reason not due to the fault of the Employee,* the bonus and deductions, if any, as provided in Paragraph 6 shall become due and payable within three weeks after such termination."

Of the list of events which, if causing non-operation or material curtailment of the operations of the plant, gives

the employer the right to terminate the contract, only one is directly within the control of the employees. That is a strike. Thus it is then that under this section if the operations of the plant are materially curtailed or stopped entirely by flood, business depression, changing economic conditions, or Act of God, etc., the bonus and the deductions provided for in the contract would become due and payable within three weeks after the Company may have been fit to terminate the contract for the curtailment of operations would not be caused by the fault of the employee. But what if the operations are materially curtailed by an act of the employees striking? A curtailment of operating from that cause would be due to the fault of the employees for that would be the purpose of the strike. In that event if the Company decides to cancel the contract neither the bonus nor the deductions become due and payable within the three week period by the clear and unambiguous language of the proviso clause of Section 9. Apparently they never become payable and the employee who engages in a strike is forced to suffer a material pecuniary loss. Is such an interpretation of the language and intent of Section 9 erroneous? Is it an interpretation that would not be upheld in any court? Those questions are not material. What is the effect on the employee who signs the contract? That is all that is material, and an interpretation that a strike which might curtail the operations of the plant would result in the forfeiture of not only the bonus, but the amount deducted from the employee's wages, is plausible and is the interpretation that would be placed on the language by the employees for they well know that strikes are injurious to the Company and that the Company would take extreme measures to prevent their occurrence. We have no quarrel with agreements not to strike entered into through collective bargaining by the employees, but it violates the Act to require employees individually to forego that right for they do have the right under the Act to engage in concerted activities. As stated in *N.L.R.B.* v. *Jahn Ollier Eng. Co.* 123 F. (2) 589—

"It appeared at the time when the union was attempting to organize and was given publicity at the time when the union was asking for an election. More than that, by it the employees agreed to render uninterrupted service for two years. Breach of this provision was to result in discharge. All this the Board believed justified a finding that the employees had foreclosed themselves of the right to engage in collective bargaining for a period of two years and had agreed not to strike during that period. We think the contract is not to be distinguished in kind and effect, but only in degree, from that in *National Licorice Co.* v. *N.L.R.B.*, 309 U. S. 350, 60 S. Ct. 569, 575, 84 L. Ed. 799, where the court said: 'The contracts * * * were the means adopted to "eliminate the Union as the collective bargaining agency of its employees." We think it plain also that by their terms they imposed legal restraints upon the employees' rights to organize and bargain collectively guaranteed by Sections 7 and 8 of the Act (29 U.S.C.A. §§ 157, 158).' See also *N.L.R.B.* v. *Vincennes Steel Corp.*, 7 Cir., 117 F. 2d 169; *N.L.R.B.* v. *Superior Tanning Co.*, 7 Cir., 117 F. 2d 881."

Bear Brand Hosiery Co., 40 N.L.R.B. No. 56.

These individual contracts are a well thought out and well devised plan to counteract unionization and to restrain employees from employing the benefits provided for them in the National Labor Relations Act.

These individual contracts have been passed upon by a tribunal other than the National Labor Relations Board. The National Defense Mediation Board, predecessor of the National War Labor Board has had occasion to consider these contracts and while we realize that the opinion of that Board concerning these individual contracts is in no way binding on this Court, we feel that the Court might be interested in reading its opinion. It is contained in National Defense Mediation Board case *in the Matter of Western Cartridge Company* and *East Alton Manufacturing Company* and *Chemical Workers' Union Local 22574*, A. F. of L., Case No. 44. It reads as follows:

"28. *Recommendations:* Regardless of whether the individual contracts are or are not valid under the

National Labor Relations Act, the panel regards these contracts in their present form as being inconsistent with a sound collective bargaining relationship between East Alton Manufacturing Company and this Union. We, therefore, recommend that East Alton Manufacturing Company should not assume or offer to its employees any such individual contracts; that Western Cartridge Company or East Alton Manufacturing Company should repay as of August 1, 1941, to each employee in the unit represented by this Union the amount he personally has paid to the Companies under his contract; that Western Cartridge Company and East Alton Manufacturing Company should take no other steps to enforce the individual contracts with respect to employees in the unit represented by this Union; and that the Union execute on behalf of those it represents, whether member or not, a release from liability on these individual contracts. This recommendation does not preclude the East Alton Manufacturing Company from exacting from each employee an appropriate personal pledge confined to the non-disclosure of patents and trade secrets."

There is ample and undisputed authority for the Board's order removing these contracts as a barrier to the employees' enjoyment of their rights and privileges under the National Labor Relations Act. In *National Licorice Co.* v. *N.L.R.B.*, 309 U. S. 350, 60 S. Ct. 569, the Supreme Court held:

> "Since the contracts were the fruits of unfair labor practices, stipulated for the renunciation by the employees of rights guaranteed by the Act, and were a continuing means of thwarting the policy of the Act, they were appropriate subjects for the affirmative remedial action of the Board authorized by Sec. 10 of the Act. *N.L.R.B.* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261."

See also

American Manufacturing Co. v. *N.L.R.B.*, 309 U. S. 629; *N.L.R.B.* v. *Hopwood Retinning Co.*, 98 F(2) 97; and *N.L.R.B.* v. *Jahn & Ollier Eng. Co.*, (Supra).

B. The Western Cartridge Employees Independent Union.

The fact that the Company Union wanted an agreement providing only for exclusive recognition and a continuation of the individual contracts (See Company's brief. pg. 31) would give rise to a strong presumption of Company domination. This is so for two reasons: (1) No bona fide labor organization would ever agree to the continuation of contracts entered into individually by the employees which completely bar the use of inter-employee cooperation and requires the welfare and the interest of the Company to be advanced without regard for the welfare and interest of the union, and (2) a bona fide labor union would insist on collective bargaining and would not agree to a continuation of individual bargaining.

We have discussed heretofore reason number one, and but a glance at the contract as a whole would be sufficient to convince even a novice in labor relations that in agreeing to a continuation of the individual contracts the Company Union did not engage in collective bargaining but that individual bargaining continued as the practice in this plant as designed by the employer.

By agreeing to Section 1 of the individual contracts, the Company union left to the sole discretion of the Company the tenure of employment of the employees—each employee agreeing individually that his services could be terminated without regard to reason or seniority. Also in Section 1 the Company union left the matter of wages to the discretion of the employer and individual bargaining. The contract provides in Section 1 "The Company agrees to pay the employee the prevailing rate . . . (for) work the employee shall perform . . . " and then " . . . (the) parties hereto recognize the necessity for modifying wage rates . . . ." That can mean only that individual bargaining on the question of wages was to continue. By being a party to the individual contract the employee says to the employer in effect "I recognize that we, you Mr. Employer and myself individually, as parties to the contract, might have to bargain about a change in my wage scale from time to time."

Section 2 forecloses any collective bargaining on the question of overtime pay and Section 7 forecloses bargaining concerning rules, regulations and working conditions, the Company retaining the right to issue instructions when and as it might choose. Thus, with these individual contracts in effect there was little or nothing left for the Company union to bargain about. Obviously, it could function as nothing more than a medium for handling individual grievances, and that was all the Company intended that it should do when the Company encouraged and interferred with its formation. The Company's domination of the policies of the Company union was for the same purpose, namely, the suppression of any real collective bargaining in the plant. This limitation of bargaining to inconsequential items has been held to be indicative of company domination. *N.L.R.B.* v. *Pennsylvania Greyhound Line*, 303 U. S. 261.

The question of whether or not an organization has been company formed and is company dominated is one that turns very closely on the facts. Congress recognized in enacting Section 8(2) of the Act that companies employ most subtle means of encouraging the formation and in dominating nonaffiliated unions. As stated in the report of the Senate (Senate Report No. 573, May 2, 1935, 74th Congress, 1st Session)—

> "It is impossible to catalog all the practices that might constitute interference, which may rest upon subtle but conscious economic pressure exerted by virtue of the employment relationship. The question is one of fact in each case. And where several of these interferences exist in combination, the employer may be said to dominate the labor organization by overriding the will of the employees."

That the Western Cartridge Company was subtle in forming and dominating the Company union is certain; but that it did encourage its formation and that it did dominate its functioning is clear in the record and the Board's Order requiring the disestablishment of this organization as a bargaining organization should be enforced.

III.

A. The Company's General Attitude Towards Union Labor.

The Company's hostile attitude towards union labor, we believe, can be no better reflected than by its slanderous reference to Francis Bunzy, the President of the American Federation of Labor Federal Labor Union Local 22574 (in its brief, page 39).

Prior to Bunzy's becoming President of Local 22574 and the organization of the employees in the East Alton Manufacturing Company, the Company recognized Bunzy as a good, conscientious, capable worker and encouraged him to go to the Company's training school. (See Brief of Western Cartridge Employees' Union, pg. 12) Since he became a leader in a bona fide labor union he is referred to as "an ex-jailbird" (See Company's Brief, pg. 39).

During a recent hearing in Washington, D. C., before a Panel of the War Labor Board, the Company attempted to smear Bunzy by claiming him to have a jail record. The Chairman of the Panel, Mark Howe, Dean of the Buffalo Law School, ordered all such references physically stricken from the record. Here again we see the Company smearing the leader of the American Federation of Labor Union with which it reluctantly bargains in its East Alton Manufacturing Company. The Company's slanderous remark has no place in its brief—there is nothing in the record concerning Bunzy's credibility, nothing concerning any prison record as a witness—and obviously it amplifies and gives clear evidence of the Company's hostile attitude towards organized labor and its leaders.

A word concerning Bunzy might not be inappropriate at this point. Bunzy, as a young boy of the Civilian Conservation Corps, engaged in the boyish prank of taking one of the blankets which had been furnished by the Government. It so happens that the taking of Government property is a crime and Bunzy was forced to serve a short term for his foolishness. That is all. He has no long prison

record as the Company seeks to make out. He is not an ex-jailbird. He committed no crime of moral turpitude nor one that would shock the conscience. It is disgusting that the Company should continue in its efforts to brand him, plague him and crucify him, but the Company's actions must impress the Court and demonstrate to it the vicious hostility the Company holds for organized labor.

Another demonstration of the Company's hostility to organized labor occurred during a National Mediation Board hearing in 1941 (supra) in which Local 22574 of the American Federation of Labor sought recognition after a Board election. The procedure it had to go through to obtain recognition was in sharp contrast to the recognition readily granted to the Company Union four years previous. The Company's attitude at the hearing was so uncooperative and so independent that only threats of Government seizure of the Company's plant could obtain enforcement of the National Mediation Board's recommendation that the Company recognize the American Federation of Labor Local 22574. While we join with the Company Union's statement that reference to newspaper articles might not be proper, we believe, as it does, that such might be of interest to the Court. (See page 33 in Brief for Western Cartridge Employees' Union.) In that attitude we set forth in a footnote excerpts from an article which appeared in the New York *Times*, June 29, 1941.[1]

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[1] WASHINGTON, June 28.—Officials indicated tonight that the Federal Government might take over the smokeless powder plant of the Western Cartridge Company at East Alton, Ill., if company officials persisted in their refusal to grant exclusive bargaining rights to the local of the Chemical Workers Union, A. F. of L., as recommended by the National Defense Mediation Board.

As the union, which won an NLRB election 377 to 82, called a meeting for Monday night at which a strike may be voted, one official predicted that President Roosevelt would act to take over the plant in advance of an actual production stoppage on Government contracts totaling millions of dollars.

* * * * *

The Mediation Board spent only a few hours discussing the Western Cartridge Company case with company and A. F. of L. representatives before making public its recommendation that the Company drop plans for a court appeal and grant to the union exclusive bargaining rights.

The board panel, headed by Charles E. Wyzanski, Jr., and including Roger D. Lapham for employers, and Edward J. Brown for employees,

This Company, the Western Cartridge Company, was so opposed to organized labor that after literally being forced by all the pressure the Government of the United States could bring to bear to recognize the American Federation of Labor as the bargaining representative of a few of its employees in its Smokeless Powder Division, it went to the trouble and expense of forming a separate corporation of its Smokeless Powder Division for the sole purpose of dealing with organized labor (Company's Supp., page 33). That, may it please the Court, is the type of company which is before you in this cause. It is the employees of that Company that the American Federation of Labor has been seeking to organize that they may enjoy collective bargaining. The Order of the National Labor Relations Board must be enforced against that Company if it is to be made to comply with the National Labor Relations Act.

IV.

A. The Discharge of William Elliott.

That William Elliott was discharged for union activities is amply supported by the evidence, as shown in the brief submitted by the National Labor Relations Board. Nu-

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pointed to Supreme Court decisions holding the NLRB bargaining unit decisions are not subject to review and declared that "there is no substantial probability that an appeal to the courts on this issue would accomplish any purpose except delay."

The panel said that the question of sole bargaining rights was the principal issue, a conclusion which R. H. McRoberts, company attorney, described as "unfair." He told the panel that the company was confident that the union demands upon the company would be so excessive that an agreement would be impossible.

Plant representatives left by airplane late today for St. Louis to confer with directors of the company, but Mediation Board officials, while hopeful that the company would accept the recommendation, expressed doubt of it.

The Mediation Board officials said that company representatives had been asked specifically whether the firm "would execute a contract with the Chemical Workers which had in it only two clauses, the first providing that wages, hours and working conditions shall be the same as those now prevailing under the Company's contract with the independent union and the second providing that the Chemical Workers shall be the exclusive bargaining representative of the employees in the unit certified by the National Labor Relations Board."

The company replied, it was stated, that "it would not agree to the second clause."

merous other employees have likewise been dismissed for the same reason and while the trial examiner so found, the Board did not find sufficient evidence in the record to support the trial examiner's recommendation (Company Supp. 43-45). We, of course, abide by the findings and decision of the Board, but we do want to point out to the Court that it is our opinion that Elliott was not the only one discharged for union activity but the only one whose discharge could actually be proven by substantial evidence to have been caused by union activity. That the Board's Order require his reinstatement is proper, is undisputed and no cases need be cited.

CONCLUSION.

It is respectfully submitted that the Board's Order be enforced in full and the petitioners' petitions denied.

Respectfully submitted,

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Counsel for American Federation of Labor and Its Affiliated Organizations.

Dated this 28th day of January, 1943.

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In the United States Circuit Court of Appeals for the Seventh Circuit

No. 8142

WESTERN CARTRIDGE COMPANY, A CORPORATION, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD AND AMERICAN FEDERATION OF LABOR AND ITS AFFILIATED ORGANIZATIONS, RESPONDENTS

No. 8155

WESTERN CARTRIDGE EMPLOYEES' INDEPENDENT UNION, A VOLUNTARY ASSOCIATION TRADE UNION, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD AND AMERICAN FEDERATION OF LABOR AND ITS AFFILIATED ORGANIZATIONS, RESPONDENTS

ON PETITIONS TO SET ASIDE AND ON REQUEST FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

JURISDICTION

This case is before the Court upon separate petitions filed by Western Cartridge Company and Western Car-

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tridge Employees' Independent Union to review and set aside an order issued by the National Labor Relations Board against petitioner, Western Cartridge Company, herein called the Company, pursuant to Section 10 (c) of the National Labor Relations Act (49 State. 449, U. S. C. Supp. V, Title 29, Sec. 151, *et seq.*).[1]

In its answer to the Company's petition, the Board requested that its order be enforced. The Board's decision, including its findings of fact, conclusions of law, and order (Supp. 13–50),[2] is reported in 44 N. L. R. B., at page 1. The jurisdiction of this Court is based upon Section 10 (e) and (f) of the Act; the unfair labor practices occurred at the Company's plant at East Alton, Illinois, within this judicial circuit.

STATEMENT OF THE CASE

Upon charges filed by the American Federation of Labor and two of its affiliated organizations,[3] and upon the usual proceedings under Section 10 of the Act, fully described in the decision (Supp. 13–16), the Board, on September 16, 1942, issued its findings of fact, conclu-

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[1] On December 12, 1942, the Court ordered that the causes be consolidated for the purposes of briefing and argument.

[2] References preceding semicolons are to the Board's decision, which is printed in the supplement to the Company's brief; "Supp." signifies references to that supplement; "B. A." signifies references to portions of the record printed in the appendix to this brief; and references to unprinted portions of the transcript of record are designated "Tr."

[3] The affiliates of the A. F. of L. here involved are Chemical Workers Local Union No. 22574, herein called Local 22574, and International Molders and Foundry Workers Union of North America, Local 333, herein called Local 333.

sions of law, and order, which may be briefly summarized as follows:

1. *The business of the Company* (Supp. 16–17).—The Company, a Delaware corporation, is a large manufacturer of munitions. It has more than 6,000 employees at its East Alton plant (Supp. 207; Bd. Exh. Nos. 3–B, 23, B. A. 99, 143); a river flows through the plant site, separating the smokeless powder division from the other departments of the plant.[4] No jurisdictional question is presented (Bd. Exh. Nos. 1–A and B–2, Supp. 2–3, 10).

2. *The unfair labor practices* (Supp. 17–45).—The Company induced its employees to sign individual contracts which infringe rights guaranteed employees by the Act, in order to create a barrier to union organization among them (Supp. 17–20). By continuing that practice, subsequent to the effective date of the Act, the Company violated Section 8 (1) of the Act (Supp. 21). It violated Section 8 (1) and (2) of the Act by dominating and interfering with the formation and administration of Western Cartridge Employees Independent Union, a labor organization of its employees, herein called the Independent, and by contributing support to that organization (Supp. 21–38). The Company violated Section 8 (1) and (3) of the Act by discharging William Elliott because of his withdrawal from the Independent and affiliation wtih Local 333 (Supp. 39–43). In further violation of Section 8 (1) of the Act, the Company disparaged outside unions,

[4] To distinguish between the smokeless powder division and the other departments, we refer to the latter as the Western Side.

warned its employees not to join such unions, intimated that it might remove its plant to avoid dealing with an outside union, and interfered with, restrained, and coerced its employees in other ways, in order to compel them to support the Independent and to deter them from membership in outside unions (Supp. 25–34).

3. *The Board's order* (Supp. 48–50).—The Board ordered the Company to cease and desist from its unfair labor practices, to withdraw recognition from and disestablish the Independent, to cease giving effect to the individual contracts found to violate the Act, and to inform its employees that they were no longer bound by those contracts, to reinstate Elliott with back pay, and to post appropriate notices.[5]

THE CONTESTED ISSUES

The contested issues are: (1) whether the Board's findings of fact concerning the unfair labor practices are supported by substantial evidence; (2) whether the Independent was accorded a fair hearing; and (3) whether the Board's order is valid.

PROPOSITIONS OF LAW RELIED UPON

A. The Company interfered with the right to self-organization of its employees, in violation of Section 8 (1) of the Act, by:

1. Urging its employees to withdraw from membership in outside unions, offering employees inducements to support the Independent, disparaging outside

[5] Finding that the Company had not discriminated against seven employees named in the complaint, the Board dismissed the complaint as to them (Supp. 43–45).

unions, villifying their leaders, intimating that it might remove its plant rather than deal with such a union, and warning employees that their union activities were under surveillance by labor spies. ***H. J. Heinz Company* v. *N. L. R. B.,*** 311 U. S. 514, 518; ***Valley Mould & Iron Corp.* v. *N. L. R. B.,*** 116 F. (2d) 760, 762–764 (C. C. A. 7), cert. denied, 313 U. S. 590; ***Rapid Roller Co.* v. *N. L. R. B.,*** 126 F. (2d) 452, 456–457 (C. C. A. 7), cert. denied, 63 S. Ct. 45.

2. Urging its employees to sign individual contracts for the purpose of keeping unions out of its plant, which contracts by their terms and by the manner in which they were interpreted infringe upon rights guaranteed employees by the Act. ***National Licorice Co.* v. *N. L. R. B.,*** 309 U. S. 350, 359–360; ***N. L. R. B.* v. *Jahn & Ollier Engraving Co.,*** 123 F. (2d) 589, 592–593 (C. C. A. 7); ***N. L. R. B.* v. *Superior Tanning Co.,*** 117 F. (2d) 881, 890–892 (C. C. A. 7), cert. denied, 313 U. S. 559; *N. L. R. B.* v. *Stone,* 125 F. (2d) 752, 754, 756 (C. C. A. 7), cert. denied, 63 S. Ct. 44; *N. L. R. B.* v. *Vincennes Steel Corp.,* 117 F. (2d) 169, 171–172 (C. C. A. 7); *N. L. R. B.* v. *Bear Brand Hosiery Co.,* decided November 27, 1942, 11 L. R. R. 453.

B. The Company interfered with the formation and administration of the Independent, and contributed support to it, in violation of Section 8 (1) and (2) of the Act. ***N. L. R. B.* v. *Link-Belt Co.,*** 311 U. S. 584, 597–600; ***International Association of Machinists* v. *N. L. R. B.,*** 311 U. S. 72, 78; ***Reliance Mfg. Co.* v. *N. L. R. B.,*** 125 F. (2d) 311, 314 (C. C. A. 7); *N. L. R. B.* v. *Bradford Dyeing Ass'n,* 310 U. S. 318, 336–338;

N. L. R. B. v. *Falk Corp.*, 308 U. S. 453, 461; *Colorado Fuel & Iron Corp.* v. *N. L. R. B.*, 121 F. (2d) 165, 175 (C. C. A. 10); *idem.*, on contempt, based upon recognition of a successor to the dominated union, 10 L. R. R. 553, decided June 8, 1942; *N. L. R. B.* v. *Texas Mining & Smelting Co.*, 117 F. (2d) 86, 88–89 (C. C. A. 5); *N. L. R. B.* v. *Eclipse Moulded Products Co.*, 126 F. (2d) 576, 578 (C. C. A. 7); *N. L. R. B.* v. *Aluminum Products Co.*, 120 F. (2d) 567, 571 (C. C. A. 7); *N. L. R. B.* v. *Auburn Foundry, Inc.*, 119 F. (2d) 331, 334–335 (C. C. A. 7).

C. The Company violated Section 8 (1) and (3) of the Act by discharging an employee because he resigned from the Independent and joined Local 22574. ***N. L. R. B.* v. *Nevada Consolidated Copper Corp.***, 316 U. S. 105; ***New York Handkerchief Mfg. Co.* v. *N. L. R. B.***, 114 F. (2d) 144, 147 (C. C. A. 7), cert. denied, 311 U. S. 704; ***N. L. R. B.* v. *Chicago Apparatus Co.***, 116 F. (2d) 753, 759 (C. C. A. 7).

D. The Board's order is valid. ***National Licorice Company* v. *N. L. R. B.***, 309 U. S. 350, 364; ***N. L. R. B.* v. *Express Publishing Company***, 312 U. S. 426, 438; ***N. L. R. B.* v. *Pacific Greyhound Lines, Inc.***, 303 U. S. 272, 275; *N. L. R. B.* v. *J. Greenebaum Tanning Co.*, 110 F. (2d) 984, 988 (C. C. A. 7), cert. denied, 311 U. S. 662; *N. L. R. B.* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 265; *N. L. R. B.* v. *Reynolds Wire Company*, 121 F. (2d) 627, 630 (C. C. A. 7); *Wilson & Co., Inc.* v. *N. L. R. B.*, 124 F. (2d) 845, 848 (C. C. A. 7); *N. L. R. B.* v. *Jahn & Ollier Engraving Company*, 123 F. (2d) 589, 592–593 (C. C. A. 7); *N. L. R. B.* v. *Superior Tanning Co.*, 117 F. (2d) 881, 890–892 (C. C. A. 7);

N. L. R. B. v. *Vincennes Steel Corp.*, 117 F. (2d) 169, 171–172 (C. C. A. 7).

E. The Independent was accorded a fair hearing. ***N. L. R. B.* v. *Link-Belt Co.***, 311 U. S. 584, 587; ***Bethlehem Steel Co.* v. *N. L. R. B.***, 120 F. (2d) 641, 653 (App. D. C.); ***United States* v. *General Motors Corp.***, 121 F. (2d) 376, 404–405 (C. C. A. 7); *American Enka Corp.* v. *N. L. R. B.*, 119 F. (2d) 60, 62–63 (C. C. A. 4); *N. L. R. B.* v. *Automotive Maintenance Machinery Co.*, 315 U. S. 282, rev'g 116 F. (2d) 350, 356 (C. C. A. 7); *N. L. R. B.* v. *New Era Die Co.*, 118 F. (2d) 500, 505 (C. C. A. 3); *N. L. R. B.* v. *Brown Paper Mill Co., Inc.*, 108 F. (2d) 867, 870–871 (C. C. A. 5) cert. denied, 310 U. S. 651; *Donnelly Garment Company* v. *N. L. R. B.*, 123 F. (2d) 215 (C. C. A. 8); *Bethlehem Shipbuilding Corp.* v. *N. L. R. B.*, 114 F. (2d) 930, 937 (C. C. A. 1).

ARGUMENT

POINT I

The Board's findings of fact are supported by substantial evidence. Upon the facts so found, the Company has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1), (2), and (3) of the Act.

A. A condensed view of the facts

1. *The individual contracts*

In 1933, J. M. Olin, a vice-president of the Company (Supp. 516), finding that unionism was, to quote from his testimony, being "agitated throughout the entire [working] force" (Supp. 529), addressed a mass meeting of the East Alton employees and suggested that the employees establish a Works Council Plan like that in effect at the Company's New Haven plant (18; Supp.

530).[6] The employees did not, however, adopt Vice-President Olin's suggestion (18; Supp. 536).

From about 1915 to 1921, the Company followed the practice of having its employees sign individual contracts which assured the employees a bonus of up to 6 percent of their annual earnings provided that they lived up to their terms (18; Supp. 272, 519, Bd. Exh. No. 16–A, Supp. 563–567).[7] In 1921 the Company ceased to offer these contracts to its employees because of the depression (Supp. 272, 519). In 1933, at about the time of Olin's speech to the employees, the Company resumed the practice of offering the individual contracts to its employees, despite the fact that business was at a very low ebb at that time (18; Supp. 272, 519). Its motive for assuming the financial burden which the bonus feature of the contract entailed was to stem the tide of unionism which the passage of the National Industrial Recovery Act had swelled. That such was the Company's purpose for renewing the individual contracts was admitted at the hearing. George Dawson, the personnel manager of the Company (Supp. 249–250), testified that their revival was due, in part, to "industrial unrest" resulting from "unionization" (18; Supp. 273). Vice President Olin likewise testified that their revival was intended to counteract "propaganda" exploiting the National In-

[6] The Plan to which Vice-President Olin referred has since been disestablished pursuant to a stipulation with the Board.

[7] We describe the contract more fully hereinafter and point out that its terms infringe upon rights guaranteed employees by the Act, *infra*, pp. 23–27.

dustrial Recovery Act (19; Supp. 519–520).[8] The Company seeks to avoid these admissions, as found by the Board, by a tortured reading of Dawson's and Olin's testimony and by contending that the evidence fails to show that unionism was being discussed at the time of the revival of the individual contracts (Co. Br. pp. 14–16). Concededly the contracts were revived in July 1933 (Supp. 272); Olin testified that the mass meeting of the employees at which he suggested the formation of a company union occurred "in the summer of 1933" (Supp. 531); that union "agitation" "at that time" [referring to the time of the meeting] (Supp. 530) had aroused the opposition of some of the employees (Supp. 530); and, answering the question: "Was there anything that occurred in that year [1933] that particularly called the use of the [individual] contracts to your attention?" Olin replied: "* * * the only thing I can recall which had any influence upon my mind * * * was the beginning of the N. R. A. process * * * the propaganda which was emanating on that subject; it seemed to me we desired to get a little closer to our employees than we were, than submitting them and subjecting them to all the press propaganda that was coming out on that subject. I might say I have never been an enthusiast in N. R. A. or anything of its ilk" (Supp. 520). This testimony, especially when considered in the context of Olin's

[8] Section 7 (a) of the N. I. R. A., the forerunner of Section 7 of the National Labor Relations Act, provided that employees should have the right to bargain collectively through freely chosen representatives.

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suggestion regarding the formation of a Company union clearly reveals the sophistry of the Company's contention. The Board, therefore, properly found (Supp. 20) that "the purpose" of the Company in reviving the contracts was "to forestall union activity among [the Company's] employees and to create a permanent barrier to union organization among them."

Since 1933, the Company has systematically urged its employees to sign the individual contracts. After 3 months' service, all new employees are either sent to the Personnel Department by their foremen or given notice, repeatedly if necessary, to report there for an interview (19; Supp. 492–495, 506–508). In these interviews, the employees are told, either singly or in groups, of the benefits which the contract provides and are urged to sign the document (19; Supp. 273–274, 493–498, Bd. Exh. No. 14, Supp. 559–560). When a contract is about to expire, the employee is notified, repeatedly if necessary, to report to the contract office for the purpose of signing a renewal (19; Supp. 274, 494–495, 506–508). Although the employees are told that signing the contract is optional, they cannot fail to realize from its liberal bonus feature and the assiduity of the Company in seeking to have them sign the contract that the Company earnestly desires them to do so. It is not surprising, therefore, that virtually all of the employees have signed such contracts.[9]

[9] The assistant to the plant manager, speaking as of April 1941, testified that only four of the thousands of workers then in the Company's employ had expressed an unwillingness to sign an individual contract (Supp. 500–501, Tr. 712–713).

2. The formation of the Independent on the advent of the C. I. O.

From 1933 to 1937, there was no union among the Company's employees, but in the spring of 1937, the C. I. O. launched a membership campaign at the Company's plant (21; Supp. 399, B. A. 23–24, 26, 54, Tr. 202). The Independent was formed to counteract that movement.[10]

Charles Taylor, a machinist, was the principal organizer of the Independent. Before going ahead with its formation, Taylor and his associates decided to find out whether the Company had any objection to the project (21; Supp. 315–319, 323). General Manager Bassett assured Taylor that the Company would not object to the inside union provided that the employees "stayed within their rights," and did not solicit membership on company time and property (21; Supp. 316, 323).[11]

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[10] Illustrative of the management's attitude toward the C. I. O. at this time is the comment which Foreman Robertson made when an employee expressed the opinion that the men needed an "outside" union. Robertson's comment was, "Well, you would get farther with the Company with an independent union" (Supp. 66). How true that statement was is abundantly shown by the events that followed.

[11] Imbued with the Company's intransigent opposition to unions and seemingly unaware that General Manager Bassett had approved the project, Meyers, the superintendent of the machine shop, on hearing of Taylor's endeavor to form the Independent, warned Taylor that he could consider himself discharged if he was "fooling around with a union" (21; Supp. 319–320, 325–327). When Taylor reported this to General Manager Bassett, the latter characterized Superintendent Meyers' remark as "unfortunate," and told Taylor to "go on to work as though nothing happened" (21; Supp. 320, 326–327).

Having secured the Company's permission to proceed, Taylor and his associates quickly perfected the organization of the Independent. On June 4, 1937, they engaged an attorney and launched a membership drive (22; Supp. 299, 319, 362–363, 368–369, B. A. 16–17, Tr. 53). Despite General Manager Bassett's admonition not to solicit on company time and property, the Independent adherents carried on their membership drive during working hours, at times in the presence of foremen. Indeed, since its inception, the Independent has extensively engaged in a variety of activities on company time and property, including the collection of monthly dues and the circulation of petitions for the selection of departmental representatives (22; Supp. 441, B. A. 17–18, 22, 23, 24, 26, 57, 74, Tr. 86, 135, 182, 191, 231–232, 279, 288–290). Yet the Company has never, so far as the record shows, voiced any objection to the use of its time and property for these purposes.[12]

3. The acceptance by the Independent of the Company's demand that bargaining be subordinate to, and not in conflict with, the individual contracts

On June 25, 1937, Otis Sullivan, the temporary secretary-treasurer[13] of the Independent, delivered a letter to Vice President Olin in which the Independent stated that it represented a majority of the employees and requested recognition (22; Supp. 295–296, 308–309,

[12] In the light of these facts, it is idle for the Company to contend, as it does (Co. Br., p. 28), that it "had nothing whatsoever to do with the formation of the Independent."

[13] Subsequently, Sullivan became the permanent secretary-treasurer of the Independent and the Company granted him a year's leave of absence without pay to enable him to devote his full time to the affairs of the Independent (22; Supp. 284–286).

Resp. Exh. No. 26, Supp. 575–576). Olin informed Sullivan that in dealing with the Independent the Company would do nothing that would jeopardize the individual contracts with its employees (22; Supp. 532–533, Resp. Exh. No. 27, Supp. 576–577).

On July 26, 1937, after its formal organization had been completed, the Independent submitted a proposed working agreement to the Company, covering hours, wages, and other conditions of employment (23; Bd. Exh. No. 9, Supp. 550–552, Tr. 73). On August 10, the parties met; the attorney for the Company submitted at this time a so-called "basic agreement" to the Independent representatives (23; Supp. 306–308, B. A. 19–20, Bd. Exh. No. 10, Supp. 553–554). This contract consisted of three clauses: the first recognized the Independent as the statutory bargaining agent of the Company's employees, but only "with respect to all matters not covered by the contracts of employment between the Company and those of its employees who have made them" (24; Bd. Exh. No. 10, Supp. 553); the second clause declared that "neither the Company nor the [Independent] admit or assert any right to change said contracts of employment without the consent of the parties thereto" (*ibid.*), but it went on to provide that if the parties should from time to time agree that a modification of the individual contract was desirable, the proposed change would be "recommended" to the employees; and the third clause of the "basic agreement" provided that the contract should remain in force for 1 year and thereafter until termi-

nated by a prescribed written natice.[14] The executive board of the Independent at first rejected the "basic agreement," but later reversed its position on being told by its attorney that the Company would negotiate no further with the Independent until the "basic agreement" was signed (24; B. A. 18–21). The "basic agreement" was executed on August 12, 1937 (24; B. A. 18, Bd. Exh. No. 10, Sup. 553–554, Tr. 93).

In complete disregard of this evidence, the Company has the temerity to argue: "It should be noted that * * * one of the things which concerned the employees themselves, *and not the company,* was the possible effect of the union [i. e., the Independent] upon their individual contracts" (Co. Br. p. 30; emphasis supplied). That the employees desired to retain the attractive bonus feature of the individual contracts—even at the expense of a renunciation of their rights

[14] Vice President Olin, following his talk with Sullivan of June 25 (*supra*, pp. 12–13), wrote a letter to the attorney for the Company, in which he defined the position which the Company would insist upon in dealing with the Independent (22–23; Resp. Exh. No. 27, Supp. 576–579). In part this letter was as follows:

"[The Company's] position must necessarily be that it is our desire to protect and to continue the constitutional rights of the employee as an individual and the Company as a corporate identity to enter into a contract such as now exists, and that we must ask that this contract be recognized and that all acts take due recognition of the existence of that contract, and that if any action is taken which tends to modify, alter, or amend the individual relationship or nature of the contract then that change should be reflected in the individual contracts. The determination must be made eventually as to how far we can go in collective bargaining and other relationship with [the Independent] and at the same time preserve the legal rights and position under the individual contract * * *" (Resp. Exh. No. 27, Supp. 578).

under the Act—is not to be wondered at. But to assert, as the Company does, that the Company was not itself concerned with the perpetuation of the individual contract, is, in the face of the record, utterly preposterous.

4. The Company's attempt to bolster up the Independent as a buffer against the A. F. of L.

From 1937 until December 1940 the sway of the Independent over the Company's employees was not challenged by an outside union, and the *modus vivendi* established by the "basic agreement" and the individual contracts was not disturbed. Despite the absence of competition, however, the membership of the Independent began to decline in the latter part of 1940 (25; Supp. 55–56). The security of its position was, moreover, threatened at this time by the appearance of the A. F. of L. (26; Supp. 53). To meet this threat, the executive committee of the Independent appealed to the Company for aid (25–26; Supp. 55–57, 61–62). Responding to this appeal, General Manager Bassett, in the presence of other company executives, informed the chairman and the secretary-treasurer of the Independent that the board of directors of the Company had authorized a wage bonus of 2 percent to be given the signers of the individual contracts, and, Bassett continued, if a notice was posted crediting the Independent with having secured the bonus, the notice would "bring the [Independent's] membership up, showing that the union was trying to do something for members in the union * * *" (26; Supp. 55–59, 61–64). Needless to say, the Independent eagerly fell in with the suggestion; its officers drafted the notice and posted it on the

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plant bulletin board the day following this conference (26; Supp. 59, 63, 282–284).[15]

In January 1941 the A. F. of L. membership campaign got under way; on January 31, a mass meeting was held at which a large number of the employees signed A. F. of L. membership applications; on February 5, Local 22574 was chartered with jurisdiction over employees in the smokeless powder division (27; Supp. 53, B. A. 10). On March 13, 1941, Local 22574 asked the Company for recognition in the smokeless powder division, offering to submit its membership cards in proof of its majority status (27; B. A. 10–12). The Company denied that request, contending that the unit was inappropriate (27; B. A. 12). On March 25, Local 22574 filed a petition with the Board, requesting certification in the smokeless powder division (27; B. A. 12). On June 13, 1941, following an election, the Board certified Local 22574 as the exclusive bargaining representative in that division (33; Bd. Exh. Nos. 3–B, 3–E, B. A. 98–105, 109–110).[16]

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[15] The Company has taken great pains to make it appear that Dawson rather than Bassett made the statement quoted above (Co. Br. pp. 40–44). But the point of the incident is that the Independent was allowed falsely to claim credit for the bonus in the bulletin board notice. That its representatives had asked the management for aid in building up its declining membership and that the bulletin-board notice was posted following the conversation above described are not disputed. Nor is it true, as the Company asserts (Co. Br. p. 44) that Dawson "positively and unequivocally denied" the aforesaid statement. Dawson, when asked about the remark, testified merely that he could not recall making such a statement (Supp. 283).

[16] The Company remonstrated with the Independent representatives for not intervening in the representation proceeding for the

Throughout this period and especially after the A. F. of L. had extended its membership campaign to the Western Side,[17] the Company engaged in varied coercive measures to keep the employees from joining the A. F. of L. Thomas Wortz, the superintendent of the smokeless powder division, sent for Bunzy, the president of Local 22574, when the A. F. of L. organizing campaign was in progress, and on opening the conversation remarked: "I expected a rough sort of a fellow—being mixed up with a union like you are" (29; B. A. 25–27, 82, 92). Superintendent Wortz then told Bunzy that he could "go places" with the Company if he would "make [himself] right with them," to which Wortz added the clarifying statement that he would send Bunzy to a training school for foremen (29; B. A. 27, Supp. 172–173). Wortz went on to say that the employees should deal with the Company through a "committee," and a "union of [their] own," instead of going over to East St. Louis and get[ting] a pot-bellied racketeer" to represent them (29; B. A. 27–28). He closed the conversation with the assertions that Local 22574

purpose of opposing the unit contention of the A. F. of L. union, even though the Independent had disclaimed any interest in the question because of its negligible membership among the employees in the smokeless powder division (32; B. A. 30–35). Dawson, the personnel manager, in urging the Independent to intervene, told Jones, a departmental representative of the Independent, he "realized that we have not accomplished everything we think we should have," but, Dawson continued, there were "great possibilities there to make a go" of the Independent (32; B. A. 32).

[17] This occurred in April or May 1941; Local 333 was chartered in August of that year with jurisdiction over the casting shop, the brass mill, and other departments on the Western Side (B. A. 13–14, Tr. 45).

was "no good" and that it was made up of "a bunch of guys" who were "bosses and wouldn't work," men who, he added, "lived off the wages of employees paid out in union dues" (29; B. A. 27, 28). Superintendent Wortz used like tactics in trying to induce Gent and McPherson, two other subordinates, to resign from Local 22574 (29–30; B. A. 41–43).

Other supervisors followed Wortz's example in opposing the outside union. Thus, Foreman Pivoda told a member of Local 22574 to "lay low on union talk" because, he said, the Company had spotters in the plant (30; B. A. 78–79, Supp. 483–486). Foreman Pivoda told another employee that Superintendent Wortz had ordered him to "break up" the union sentiment of two of his men (30; B. A. 22, Supp. 54). Foremen Arnold and Monical urged an employee to resign from Local 22574; the latter reinforced his plea by asking the employee whether the Company or the A. F. of L. "could do the most for him" (30; B. A. 74–76). Another foreman, named Canhan, in talking with an employee named Wildt, argued against membership in the outside union by adverting to the experience of his brother-in-law who assertedly had been out of work for 6 months because of a strike. Canhan concluded the talk by saying that Wildt's welfare would be better served by keeping his individual contract than by joining a union and losing that contract (31; B. A. 45–48). Foreman Schindel assured another employee that he would "get ahead around here" if he opposed the outside union, and warned the man that the Company might remove its plant rather than deal with a union which it opposed (31–32; B. A. 79–80, Supp. 86–88, 477–479).

The coercive tactics described above were supplemented by measures designed to strengthen the Independent. We have already noted the wage bonus which the Company falsely credited to the Independent (*supra*, pp. 15–16). In March 1941, when the contest for supremacy between the Independent and the A. F. of L. was well under way, Superintendent Day and his assistant, McCauley, repeatedly prodded William Elliott, the departmental representative of the Independent in the casting department, to be more aggressive in pressing grievances (27–28; B. A. 54, 55–56, 60–61, Supp. 91, 545–546). Day told Elliott that he saw no reason why "the Independent Union couldn't be made to work," adding that he counted on Elliott to help him in attaining that objective (28; B. A. 55–56).[18] To allay dissatisfaction with wages and working conditions then rife in Elliott's department, the Company entered into a working agreement with the Independent, granting higher wages and improved conditions in that depart-

[18] When this prodding failed of its desired effect, Superintendent Day bluntly told Elliott either to become more active in pressing grievances or to resign his Independent post (28; Supp. 545–546). Elliott withdrew from the Independent after this incident, and was discharged soon thereafter (*infra*, pp. 31–32). We later point out, in showing that Elliott was a victim of discrimination, that Superintendent Day admitted at the hearing that Elliott's apathy as a departmental representative of the Independent was a contributing cause for his dismissal (*infra*, pp. 32, 33). In seeking to explain this admission, Superintendent Day added that Elliott's apathy towards the Independent "tended to indicate his attitude toward the Company" (28–29; Supp. 95–96). The only inference that can be drawn from this statement is that Superintendent Day considered the interests of the Company and of the Independent to be identical.

ment (27; Supp. 91–92, 110–114, 116–117, Bd. Exh. No. 15, Supp. 561–562). The timing of these concessions, relative to the A. F. of L. bid for support among these employees, is a clear indication of the Company's desire to prevent the outside union from gaining a foothold in the plant.

After Local 22574 had won the Board election, held on May 26, 1941, the Company disregarding the Board's unit determination respecting the smokeless powder division and the election victory of Local 22574, entered into a working agreement with the Independent on June 4, 1941, reaffirming the grant of recognition to the Independent as bargaining agent for *all* employees in the plant (32; Supp. 72–73, Bd. Exh. No. 13, B. A. 132–139, 35–36, 52).[19] The contract declared that it should not be deemed to amend in any way the individual contracts and expressly confirmed the "basic agreement" (*ibid.*).[20] On June 13, 1941, the Company declined to recognize Local 22574, notwithstanding that the Board had certified it, contending that the Board's unit determination was erroneous and that its June 4, 1941, agree-

[19] The Company's purpose to force the Independent upon its employees is revealed by the fact that it entered into this contract, not only knowing of the right to exclusive recognition of Local 22574 in the smokeless-powder division, but even without asking the Independent for evidence that it represented a majority in the plant-wide unit. This recognition was granted despite the fact that 4 years had elapsed since the Independent had, assertedly, satisfied the Company of its majority (33; B. A. 36, 52).

[20] It should also be noted that Section 9 of the June 4 contract restricted vacations with pay to employees "who have a written Employment Contract with the Employer" (33; B. A. 128).

ment with the Independent precluded such recognition (33; Bd. Exh. No. 3–D, B. A. 107–108).

About July 8, 1941, the Company incorporated the East Alton Manufacturing Company, a Maryland corporation, which took over the operation of the smokeless powder division (33; B. A. 9–10, Supp. 9–10). On August 2, after the intercession of the National Defense Mediation Board, predecessor of the National War Labor Board, the new corporation entered into a collective agreement with Local 22574, providing, among other things, that the individual contracts between the Company and some 423 employees of the smokeless powder division should not be assigned to the new company, and that like contracts should not in the future be offered the employees of that division (33–34; Bd. Exh. Nos. 3–K, 3–L, 24, B. A. 117–127, 147–165).

B. The respects in which the Company's conduct violated Section 8 (1) and (2) of the Act

1. Interference with employee rights by anti-union statements of company officials and foremen

The duty of an employer in the presence of union rivalry is epitomized in this Court's statement that he must observe "the utmost of honesty neutrality" (*Valley Mould & Iron Corp.* v. *N. L. R. B.*, 116 F. (2d) 760, 764). The conduct of the Company fell far short of that standard. Its officials and foremen urged employees to support the Independent, buttressing their plea with promises of preferment (*supra*, p. 11, note 10, 17, 18); Superintendent Wortz vilified leaders of the A. F. of L. union as a venal, corrupt body of parasites and disparaged the Union itself as "no good" (*supra*,

pp. 17–18); his foremen followed his example by urging subordinates to withdraw from the A. F. of L., coupling these appeals at times with assurances of rewards for compliance (*supra,* p. 18); one foreman implemented his attempt to dissuade an employee from suporting the A. F. of L. by saying that the company had labor spies in its employ (*supra,* p. 18); another intimated that the Company might remove its plant if the outside union succeeded in organizing the employees (*supra,* p. 18). This intimidation constituted a flagrant violation of Section 8 (1) of the Act, and the Board properly so found. Cf. *H. J. Heinz Company* v. *N. L. R. B.,* 311 U. S. 514, 518; *Valley Mould & Iron Corp* v. *N. L. R. B.,* 116 F. (2d) 760, 762–764 (C. C. A. 7), cert. denied, 313 U. S. 590; *Rapid Roller Co.* v. *N. L. R. B.,* 126 F. (2d) 452, 456–457 (C. C. A. 7), cert denied, 63 S. Ct. 45. In the face of this clear showing of interference and in bland disregard both of the Company's assistance to the Independent and discouragement of membership in the outside unions (*supra,* pp. 15–21), the Company argues in its brief (at p. 12) that "there is an utter absence of any evidence of any of those facts which are so commonly found to accompany anti-labor policies and company domination of unaffiliated unions." Not content, however, to rely upon this assertion, the Company devotes pages of its brief to a discussion of the Board's findings of intimidation in an effort to have it appear that the intimidation was innocuous. (See pp. 47–51, 55–61 of the Company's brief.) Woven into the fabric of the Company's contention is the specious argument that the intimidatory utterances

were not successful in dissuading the employees from joining the outside unions. In rejecting this argument this Court has recently said:

> It is argued by the Company that because the employees joined the Union almost one hundred percent, therefore the evidence of duress and the effectiveness of the duress had not been shown. In the first place, it is not necessary to show duress but only interference, and it is not necessary that the interference shall be successful in preventing organization. It is only necessary to show that the employer interfered, intimidated, or coerced. It is the purpose of the statute to see that the employer does not interfere or intrude into the affairs of the employees.

Rapid Roller Co. v. *N. L. R. B.*, 126 F. (2d) 452, 457, cert. denied 63 S. Ct. 45.

2. The individual contracts

Three separate considerations support the Board's finding that the Company interfered with its employees' right to self-organization "by urging and persuading [them] to sign the individual contracts of employment" (Supp. 21) after the Act went into effect.

First, the evidence shows, as the Board found (Supp. 20), that the Company renewed its practice of having employees sign such contracts with the deliberate purpose of keeping its workers unorganized (*supra*, pp. 7–10). Witness to this is the testimony of its own officials, and Vice President Olin's attempt, contemporaneously with the reintroduction of the individual contracts, to divert the organizational desires of the employees into channels acceptable to the Company

(*supra,* pp. 7–10). The bonus feature of the contract, like the profit-sharing scheme in *N. L. R. B.* v. *Jahn & Ollier Engraving Co.,* 123 F. (2d) 589, 592 (C. C. A. 7), was "so favorable that little difficulty was experienced in procuring signatures." Interference is no less interference because it is accomplished through allurement rather than coercion. When, as here, the system of individual contracts was deliberately employed to stem a tide of organization and was thereafter used as a buffer against legitimate unions, it necessarily falls within the prohibition of interference contained in Section 8 (1) of the Act. Here, as in *National Licorice Company* v. *N. L. R. B.,* 309 U. S. 350, a system of individual contracts was "the means adopted to 'eliminate' [outside unions] * * *" as collective bargaining agents of the company's employees. The use of individual contracts for such a purpose is, as this Court has repeatedly held, a clear violation of the Act. *N. L. R. B.* v. *Jahn & Ollier Engraving Co.,* 123 F. (2d) 589, 592–593; *N. L. R. B.* v. *Superior Tanning Co.,* 117 F. (2d) 881, 890–892, cert. denied, 313 U. S. 559; *N. L. R. B.* v. *Vincennes Steel Corp.,* 117 F. (2d) 169, 171–172; *N. L. R. B.* v. *Bear Brand Hosiery Co.,* 11 L. R. R. 453, decided November 27, 1942.

A second and independent ground for the Board's finding with respect to the individual contracts is that their terms renounce rights guaranteed employees by the Act. The contract is for a fixed term, either 6 months or 1 year, and obligates the employee to devote his full time throughout that term to the business of the Company (Bd. Exh. No. 16–A, Supp. 563–567, par. 3);

breach of that undertaking entails, at the option of the Company, his "immediate suspension or dismissal" (*ibid.*, par. 4); its faithful performance is, moreover, made a condition precedent to the employee's receiving the bonus stipulated for in paragraph 6 of the contract. The obligation to pay the bonus is hedged about with the further condition that "the employee continue in the employ of the Company for the entire period of this contract" (*ibid.*, par. 8). The contract also provides that the Company may terminate it, in the event of "the non-operation, or the material curtailment of the operations, of the plant * * * due to * * * strikes * * *" (*ibid.*, par. 9). The employee in such case forfeits the bonus plus any sum which the Company has deducted from his wages pursuant to the contract if the contingency resulting in the shut-down or curtailment is due "to the fault of the Employee" (*ibid.*, par. 9). The effect of this contract, as the Board found (Supp. 19–20), is to give the Company "the right to terminate the employment of any employee who participate[s] in a strike or any other concerted activity regarded as interfering with his 'faithfully' fulfilling 'all his obligations,' and to deprive any such employee of his bonus." Consequently, the Board went on to say, "A premimum [is] thus placed by the [Company] on an employee's refusing to engage in concerted activities with his fellow employees, and the full weight of the [Company's] approval [is] used in persuading employees individually to accept this restriction on their rights under the Act" (Supp. 20). The contracts here involved, like those under consideration in the *National Licorice* case, "by

their terms," therefore, impose "illegal restraints upon the employees' rights to organize and bargain collectively guaranteed by Sections 7 and 8 of the Act." *National Licorice Co.* v. *N. L. R. B.*, 309 U. S. 350, 359–360. (See also the decisions of this Court cited at p. 24, *supra*, and *N. L. R. B.* v. *Stone*, 125 F. (2d) 752, 754, 756 (C. C. A. 7), cert. denied, 63 S. Ct. 44.)

The Company's disingenuous assertion (Co. Br. p. 18) that the contracting employee is as free to strike or engage in concerted activity after signing the contract as before is foreclosed by the *Jahn & Ollier* decision.[21] The individual contract there under consideration is indistinguishable from the one here involved. There, as here, the employer contended that the contract did not infringe the employee's right to strike. (See Brief for respondent, *Jahn & Ollier Engraving Co.*, pp. 6–8, Cause No. 7261, Oct. 1941 Term.) But this Court rejected that specious contention, pointing out that "the contract is not to be distinguished in kind and effect, but only in degree, from that in *National Licorice Co.* v. *N. L. R. B.*, 309 U. S. 350, * * *" (123 F. (2d), at p. 593).[22] The Independent, moreover, unlike the Com-

[21] It need hardly be said that an agreement not to strike entered into with a freely chosen bargaining representative does not violate the Act. The vice in the contracts in the present case is that they imposed that restriction on *individual* employees. See *Matter of Arcade-Sunshine Company, Inc.* and *Laundry Workers, Cleaners, & Dyers Union*, 12 N. L. R. B. 259, 264–265, enforced in 118 F. (2d) 49 (App. D. C.), cert. denied, 313 U. S. 567.

[22] The sincerity of the Company in urging this argument is impugned by the fact that Vice President Olin considered the individual contract as preventing strikes by outside unions. This is clearly inferable from his statement, which is recorded in the min-

pany, concedes that (Ind. Br. p. 38): "the [individual] contract provides that if an employee working under it starts or instigates a strike, which results in disruption or material curtailment of [plant] operations, that employee will not be paid a bonus." The Company's further assertion that if the individual contract infringes on employee rights under the Act, "then it is difficult to see how any individual contract can be valid" (Co. Br. p. 18) is plainly frivolous.

The individual contracts are invalid for still another reason, namely, that under the "basic agreement" with the Independent the individual contract was the definitive instrument to which all understandings arrived at in negotiations with the Independent were to be reduced. The individual contracts were, therefore, an integral part of the bargaining relationship between the Company and the Independent. Since, as we later point out (*infra*, pp. 27–31), the Independent was a company-dominated union, the abrogation of the individual contracts is required to make effective the cease and desist and disestablishment order relating to the Independent. Cf. *N. L. R. B.* v. *Pacific Greyhound Lines, Inc.*, 303 U. S. 272, 275; *N. L. R. B.* v. *J. Greenebaum Tanning Co.*, 110 F. (2d) 984, 988 (C. C. A. 7); cert. denied, 311 U. S. 662.

3. Domination of the Independent

The Company's dealings with its employees, as heretofore recounted, disclose an unswerving purpose to

utes of the Independent and was not disputed at the hearing, "that an injunction could be secured if any action was taken *by outside parties* which would imperil present satisfactory operations of these contracts (Supp. 259–260, 271–272).

repel outside unions, a purpose effectuated by intimidation, allurement, and support of the Independent. These measures not only discouraged membership in outside unions, but they also created a highly favorable environment for the growth of an organization not handicapped by employer disfavor. This Court has emphasized the importance of such support, in speaking of a union which the Board found to be company-dominated, when it said that "standing alone" the evidence of domination was "not of a convincing nature, but taken in connection with [the employer's] attitude toward outside unions [it was] sufficient." *Reliance Mfg. Co.* v. *N. L. R. B.*, 125 F. (2d) 311, 314. To like effect are *N. L. R. B.* v. *Link-Belt Co.*, 311 U. S. 584, 597–600; *N. L. R. B.* v. *Eclipse Moulded Products Co.*, 126 F. (2d) 576, 578 (C. C. A. 7); *N. L. R. B.* v. *Aluminum Products Co.*, 120 F. (2d) 567, 571 (C. C. A. 7); *N. L. R. B.* v. *Auburn Foundry, Inc.*, 119 F. (2d) 331, 334–335 (C. C. A. 7).

The uncompromising opposition of the Company toward the outside unions (*supra*, pp. 17–18) enhances immeasurably the illegal favors bestowed upon the Independent. "Known hostility to one union," said the Supreme Court, "and clear discrimination against it may indeed make seemingly trivial intimations of preference for another union powerful assistance for it" (*International Association of Machinists* v. *N. L. R. B.*, 311 U. S. 72, 78). The favors granted the Independent were, however, far from "trivial": they included (1) an attempt to bolster up its membership by falsely crediting it with having obtained a bonus that the Com-

pany had unilaterally decided to give its employees (*supra,* pp. 15–16; Cf. *Western Union Telegraph Co.* v. *N. L. R. B.,* 113 F. (2d) 992, 995 (C. C. A. 2)); (2) the free use of company time, property, and facilities in carrying on Independent affairs (*supra,* p. 12); and (3) the reaffirmation of exclusive recognition to the Independent for the entire plant after Local 22574 had established its right to represent the smokeless powder division in proceedings before the Board (*supra,* p. 20).[23]

And, finally, as the Board has pointed out (Supp. 36), the Company "made acceptance of the individual contracts a condition precedent to bargaining with the Independent. The condition was merely accepted by the Independent, and its acquiescence demonstrated its complete subservience to the [Company] and its inability to act as a true bargaining representative for the employees. Without obtaining any agreement as to wages, hours or other working conditions of advantage to the employees, the Independent, in effect, relinquished the right to strike, endorsed the individual contracts, and acknowledged that the contracts were paramount to the guarantee of collective bargaining contained in the Act. We do not believe that a *bona fide* labor organization, not dominated by the [Company] would

[23] Such favoritism in regard to recognition has long been an earmark of employer support. Cf. *N. L. R. B.* v. *Bradford Dyeing Ass'n,* 310 U. S. 318, 336–338; *N. L. R. B.* v. *Falk Corp.,* 308 U. S. 453, 461; *Colorado Fuel & Iron Corp.* v. *N. L. R. B.,* 121 F. (2d) 165, 175 (C. C. A. 10); *idem,* on contempt, based upon recognition of a successor to the dominated union, 10 L. R. R. 553, decided June 8, 1942; *N. L. R. B.* v. *Texas Mining & Smelting Co.,* 117 F. (2d) 86, 88–89 (C. C. A. 5).

thus have joined with the [Company] in attempting to deprive its employees of their rights under the Act."[24] In seeking to impeach this finding, the Company contends: "This finding of the Board, if upheld by the Courts, would in effect write into the law a provision that a Company and a union, in arriving at an agreement as a result of collective bargaining, must embody such agreement in [a] formal document or run the risk of the union being charged with company domination" (Co. Br., p. 36). The subserviency to which the Board adverts was not, however, the absence of a "formal document" as a memorial of collective bargaining, but rather the absence of a genuine collective agreement and the gratuitous surrender by the Independent of the employees' rights under the Act.

The assertion (Co. Br. p. 33–35) that the "basic agreement" is a genuine collective bargaining contract, such as the Act contemplates, is incorrect. The "basic agreement," by restricting recognition of the Independent to matters not covered by the individual contract, and by withholding contractual force from understandings reached with the Independent unless the understandings were made part of the individual contract, rendered genuine collective bargaining impossible. In the first place, the grant of full and unconditional recognition to an accredited bargaining representative is a fundamental prerequisite to collective bargaining under the Act. *McQuay-Norris Mfg.*

[24] The A. F. of L. union, it should be noted, insisted upon the elimination of the individual contract as its first bargaining step (*supra*, p. 21).

Co. v. *N. L. R. B.*, 116 F. (2d) 748 (C. C. A. 7), cert. denied, 313 U. S. 565. By its very terms, the "basic agreement" repudiated that obligation. Furthermore, the signing of a written contract with the accredited union embodying a wage and hour agreement is the final step in the bargaining procedure contemplated by the Act. *H. J. Heinz* v. *N. L. R. B.*, 311 U. S. 514, 522–523. Again, by its very terms, the "basic agreement" repudiated that obligation. Thus, the "basic agreement" violates the fundamental requirements of the Act.

In sum: the facts conclusively establish, as the Board found (Supp. 38), that the Company dominated and contributed support to the Independent in violation of Section 8 (1) and (2) of the Act.

C. The discharge of Elliott in violation of Section 8 (3) and (1) of the Act

William Elliott, a machinist, entered the employ of the Company in 1925 (39; B. A. 54); his last period of employment continued from 1930 until July 25, 1941, when he was discharged, allegedly for having continually criticized the management. The Board found that the Company's explanation for his dismissal was a pretext designed to conceal the unlawful motive for his discharge (Supp. 42–43).

Elliott was, concededly, a good workman during the many years that he was in the Company's employ (Supp. 102, 134–135, B. A. 64–65). In 1941, Elliott became the representative of the Independent in the casting shop (39; B. A. 55). In the spring of 1941, when the A. F. of L. was waging its organizing campaign

(*supra*, p. 16), Superintendent Day and Supervisor McCauley chided Elliott for not being more aggressive in discharging his duties as such representative; these admonitions culminated, as has been noted (*supra*, p. 19), in Superintendent Day's statement to Elliott that he should either become more aggressive as an Independent representative or resign the post (*supra*, p. 19, note 18). Elliott resigned from the Independent following this episode and, in July 1941, joined the A. F. of L. (27–29, 39; B. A. 56–57, 67). On July 23, 1941, he was elected financial secretary of Local 333, the A. F. of L. local union which was chartered to represent employees in departments of the Western Side (39; B. A. 13, 57).[25] His election to office in Local 333 immediately became known to the supervisors of the casting shop (39; B. A. 68–69, 71–72). His dismissal occurred on July 25—2 days after that event.[26] Superintendent Day admitted at the hearing that Elliott's discharge was in part motivated by his failure to represent the Independent in a manner satisfactory to the Company (*supra*, note 18, p. 19).

The Company's explanation for Elliott's discharge, as the Board found, was patently implausible. The chief complaint against Elliott was that he had from time to time voiced criticism of the management regarding the administration of a bonus system. But the bo-

[25] See note 17, *supra*, p. 17.

[26] It is not without significance that Mrs. Elliott, who was employed in the brass-mill office, was also discharged on July 25, 1941. Conflicting explanations for her discharge were given by the Company's representatives at the Board hearing (B. A. 90–91, Supp. 546–547). Through the intercession of the Board's Regional Director, Mrs. Elliott was reinstated about a week after her discharge (40–41; Supp. 547–549; B. A. 95).

nus system which was the subject of his criticism had been discontinued long prior to his dismissal; consequently Elliott's grievance on that score was of no practical moment (Supp. 125, 203–204, Tr. 505–511). Moreover, his views on that subject were known to the management and tolerated by it for years prior to his dismissal (42; Supp. 91–93, Tr. 506–507). The resurrection of this matter is significant of how difficult it was for the Company to discover a pretext for Elliott's discharge.

The incident which, assertedly, precipitated Elliott's discharge was his disapproval of a proposed change in shift schedules. But admittedly, Elliott stated his views at the express invitation of the management (39; Supp. 107–109, 124–125, 152–153, B. A. 57–60, 88–90). Before instituting the proposed change in schedule, the Company had its foremen poll the employees on whether or not they favored the change (39; Supp. 146, 152–153, B. A. 89). When Foreman Terry invited Elliott to express his opinion, Elliott said that he opposed the change because it would cause the employees a monetary loss (39; B. A. 57–58, 88). His views were reported to Superintendent Day; after receiving that report Day sent for Elliott and discharged him. When Elliott asked Day why he was being dismissed, Day adverted to the Independent saying: "You stuck me in the back, and let me down" (40; Supp. 107–109, 142–145, B. A. 61–62).

In these circumstances, and especially in view of Superintendent Day's admission that Elliott's apathy as an Independent representative was a contributing

cause for his discharge, the Board could reasonably find, as it did, "that [the Company] knew and accepted Elliott as an outspoken and critical employee and expressed no disapproval of his critical attitude until he abandoned the Independent and became active in Local 333" (Supp. 42). Accordingly, the Board was warranted in finding that "Elliott's critical attitude was used by the [Company] as a pretext" to conceal the fact that he "was discharged * * * because of his withdrawal from the Independent and because of his membership in and activity on behalf of Local 333" (*ibid.*). Cf. *N. L. R. B.* v. *Nevada Consolidated Copper Corp.*, 316 U. S. 105; *New York Handkerchief Mfg. Co.* v. *N. L. R. B.*, 114 F. (2d) 144, 147 (C. C. A. 7), cert. denied 311 U. S. 704; *N. L. R. B.* v. *Chicago Apparatus Co.*, 116 F. (2d) 753, 759 (C. C. A. 7).

Point II

The Independent was accorded a fair hearing

The Independent complains (Ind. Br. p. 22) of the exclusion of testimony as to why its members joined the organization. It is important to note the precise character of the ruling. The Trial Examiner allowed the parties to examine any witness who participated in the organization of the Independent as to his reasons for joining the Independent (Supp. 404–405, 458). But in order to keep the hearing within reasonable bounds, the Examiner refused to permit the calling of several thousand employees, who joined the Independent after its formation, for the purpose of having them testify to their reasons for joining the organization.

In so ruling, the Examiner stated: "It certainly would be highly cumulative and put an impossible burden upon the Trial Examiner and the Board here to ask two thousand or possibly more witnesses [to be called for that purpose]" (Supp. 458). We submit that the ruling of the Examiner was a proper exercise of his discretion. To receive this cumulative testimony would have prolonged the hearing beyond all reasonable bounds.

Furthermore, testimony of this subjective character is notoriously unreliable—particularly when elicited in the presence of an employer who has demonstrated a bias in favor of one of competing labor organizations; and, in any event, cannot overcome positive, specific evidence of interference, domination, and support in violation of the Act. Compare *United States* v. *General Motors Corp.*, 121 F. (2d) 376, 404–405 (C. C. A. 7), cert. denied, 314 U. S. 618; *Bethlehem Steel Co.* v. *N. L. R. B.*, 120 F. (2d) 641, 653 (App. D. C.). In *Bethlehem Shipbuilding Corp.* v. *N. L. R. B.*, 114 F. (2d) 930, 937, the Circuit Court of Appeals for the First Circuit overruled the contention that freedom from employer domination was shown by testimony of employee representatives under the representation plan found to be company dominated that they were "under no sense of constraint." The Court pointed out that "recognition of constraint" is "a subtle thing" and calls "for a high degree of introspective perception." Similarly, the Fourth Circuit declared "uncontradicted testimony of a large number of employees to the effect that they were free from coercion by the Company in voting

for representatives on the committees [of the organization found to be dominated] and that the committees were free of coercion . . . and . . . that . . . a large majority of the employees voted in favor of [a continuance of] the existing method of employee representation" can not "avail respondent," because, "seldom does the domination and interference with employee representation . . . take the form of threats or coercion." "More often," the Court went on to say, "it is to be found in the guise of friendly cooperation. . . ." *American Enka Corp.* v. *N. L. R. B.*, 119 F. (2d) 60, 62–63 (C. C. A. 4). In short, as the Supreme Court has said, "It would indeed be a rare case where the finders of fact could probe the precise factors of motivation which underlay each employee's choice [of competing unions]. Normally, the conclusion that their choice was restrained by the employer's interference must of necessity be based on the existence of conditions or circumstances which the employer created or for which he was fairly responsible and as a result of which it may reasonably be inferred that the employees did not have that complete and unfettered freedom of choice which the Act contemplates." *N. L. R. B.* v. *Link-Belt Co.*, 311 U. S. 584, 588.[27] Considering therefore that the rejected testimony was cumulative, that receiving the evidence would have unreasonably prolonged the hearing, that the proffered testimony would be entitled

[27] See also *N. L. R. B.* v. *Automotive Maintenance Machinery Co.*, 315 U. S. 282, rev'g 116 F. (2d) 350, 356 (C. C. A. 7); *N. L. R. B.* v. *New Era Die Co.*, 118 F. (2d) 500, 505 (C. C. A. 3); *N. L. R. B.* v. *Brown Paper Mill Co., Inc.*, 108 F. (2d) 867, 870–871 (C. C. A. 5), cert. denied, 310 U. S. 651.

to little weight when viewed against the cogent, specific evidence of employer interference in this case, the Examiner's ruling was plainly not an abuse of discretion.

The only authority upon which the Independent relies in assailing the ruling is *Donnelly Garment Company* v. *N. L. R. B.*, 123 F. (2d) 215 (C. C. A. 8). In the *Donnelly* case, however, the Court explicitly recognized that cumulative evidence may properly be excluded; this is implicit in the Court's statement that, "There were available to [the Trial Examiner] well-known expedients for limiting the number of witnesses where their testimony was *cumulative*" (123 F. (2d), at p. 222 (italics supplied)). Furthermore, the evidence excluded in the *Donnelly* case (contained in an offer of proof constituting a document of 23 pages) included a great variety of facts bearing upon the domination issue, in addition to the subjective evaluation by the employees of their reasons for joining the union alleged to be dominated. But if our interpretation of the *Donnelly* case is incorrect, then, we submit, the decision conflicts with the holdings of the Supreme Court noted above, as well as with the decisions of the circuit courts of appeals to which reference has been made.

Point III

The Board's order is valid

The cease and desist provisions of the Board's order are mandatory under Section 10 (c) of the Act. *N. L. R. B.* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 265. Paragraph 1 (f) of the order (Supp. 49), requiring the Company to cease and desist from

"in any other manner" interfering with the exercise by its employees of the rights guaranteed by Section 7 of the Act, is a proper safeguard against the "threat of continuing and varying efforts to attain the same end in the future" which is implicit in its past misconduct. *N. L. R. B.* v. ***Express Publishing Co.,*** 312 U. S. 426, 438; *N. L. R. B.* v. ***Reynolds Wire Co.,*** 121 F. (2d) 627, 630 (C. C. A. 7); ***Wilson & Co., Inc.*** v. *N. L. R. B.,* 124 F. (2d) 845, 848 (C. C. A. 7).

Paragraph 1 (a) and 2 (d) of the Board's order, directing the Company to cease giving effect to the individual contracts found to violate the Act (without prejudice, however, to the assertion by the employees of any legal rights they may have acquired under such contracts) and to notify its employees that it will not enforce the contracts, or in future require such contracts to be executed, are in conformity with the order approved in ***National Licorice Co.*** v. *N. L. R. B.,* 309 U. S. 350, 364, 367, and with the orders which this Court enforced in the ***Jahn & Ollier Engraving Co., Superior Tanning, Stone,*** and ***Vincennes Steel Corp.*** cases, *supra* p. 24.[28]

The propriety of the requirements (1) that the Company disestablish the Independent and cease giving effect to its agreements with the Independent;[29] (2) that it offer reinstatement with back pay to William

[28] The order respecting the individual contracts is also valid under the authorities cited at p. 27, *supra.*

[29] The Board's decision provides, however, that nothing in the order should be taken to require the Company "to vary those wage, hour, and other substantive features of its relations with the employees, themselves, which the respondent has established in the performance of such agreements" (Supp. 46).

Elliott; and (3) that it post appropriate notices is well established. See the *Reynolds Wire Co.* and *Wilson & Co., Inc.*, cases, *supra*, p. 38.

CONCLUSION

It is respectfully submitted that the findings of the Board are supported by substantial evidence, that the Board's order is valid, and that a decree should issue denying the petitions to review, and enforcing the Board's order in full.

ROBERT B. WATTS,
General Counsel,
ERNEST A. GROSS,
Associate General Counsel,
HOWARD LICHTENSTEIN,
Assistant General Counsel,
ROMAN BECK,
ARMIN UHLER,
Attorneys,
National Labor Relations Board.

JANUARY 1943.

U. S. GOVERNMENT PRINTING OFFICE: 1943

APPENDIX TO

No.

WESTERN CARTRIDGE COMPANY,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD AND AMERICAN FEDERATION OF LABOR AND ITS AFFILIATED ORGANIZATIONS,

WESTERN CARTRIDGE EMPLOYEES' UNION,
Union.

NATIONAL LABOR RELATIONS BOARD AND AMERICAN FEDERATION OF LABOR AND ITS AFFILIATED ORGANIZATIONS,

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IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 8142.

Western Cartridge Company,

Petitioner,

vs.

National Labor Relations Board and American Federation of Labor and Its Affiliated Organizations,

Respondents.

On Petition to Review and Set Aside an Order of the National Labor Relations Board.

ANSWER OF THE NATIONAL LABOR RELATIONS BOARD AND REQUEST FOR ENFORCEMENT.

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Seventh Circuit:

Comes now the National Labor Relations Board and, pursuant to the National Labor Relations Act (49 Stat. 449, 29 U. S. C., Sec. 151, et seq.), files this answer to the petition to review an order of the Board, filed herein, and this request for enforcement of the Board's order.

(1) Answering the allegations of the petition to review on pages 2 and 3 entitled, "Statement of the Nature of the Proceedings," the Board prays reference to the certified transcript of the entire record of the proceedings before the Board filed herein for a full and exact statement of the pleadings, evidence, findings of fact, conclusions of law, and order of the Board, and all other proceedings had in this matter before the Board.

(2) The Board admits the allegations on pages 3 and 4 of the petition to review entitled, "Venue."

(3) The Board denies each and every allegation of error set forth under the caption "Statement of Points" on pages 4 to 11, inclusive, of the petition to review.

Wherefore, having answered each and every allegation contained in the petition to review, the Board requests this Honorable Court to deny said petition insofar as it requests that the order of the Board be set aside.

Further answering, the Board, pursuant to Section 10 (e) of the National Labor Relations Act, respectfully requests this Honorable Court for enforcement of its order against petitioner dated September 16, 1942, entered in the proceeding before the Board entitled, "In the Matter of Western Cartridge Company, a corporation, and American Federation of Labor and its affiliated organizations," which proceeding is designated in the records of the Board as Case No. C-2123. In support of its request for enforcement of this order, the Board alleges:

(a) Petitioner, a Delaware corporation, transacts business and has a manufacturing plant in the City of East Alton, Illinois; and the unfair labor practices occurred at that plant.

(b) Upon the proceedings had before the Board in Case No. C-2123, including, without limitation, the complaint, the answers, the hearing for the purpose of taking testimony, the Trial Examiner's Intermediate Report, the exceptions filed thereto, and the oral argument before the Board, more fully shown by the transcript of the entire record filed herein, to which reference is hereby made, the Board, on September 16, 1942, duly stated its findings of fact and conclusions of law and issued an order directed to petitioner, its officers, agents, successors, and assigns, as follows:

Order.

> Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, West-

ern Cartridge Company, East Alton, Illinois, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Giving effect to its individual contracts of employment with employees or to any modification, continuation, extension, or renewal thereof, and from requesting its employees to enter into any similar contracts of employment;

(b) Dominating or interfering with the administration of Western Cartridge Employees Independent Union or with the formation or administration of any other labor organization of its employees, and from contributing support to Western Cartridge Employees Independent Union or to any other labor organization of its employees;

(c) Recognizing Western Cartridge Employees Independent Union as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, rates of pay, wages, hours of employment, or other conditions of employment;

(d) Giving effect to its agreement of August 12, 1937, March 18, 1941, and June 4, 1941, or to any other contracts or agreements it may have entered into with Western Cartridge Employees Independent Union in respect to rates of pay, wages, hours of employment, or other conditions of employment;

(e) Discouraging membership in International Molders and Foundry Workers Union of North America, Local No. 333, affiliated with the American Federation of Labor, or in any other labor organization of its employees, by discriminating in regard to the hire or tenure of employment or any term or condition of employment of any of its employees;

(f) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bar-

gaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Withdraw all recognition from Western Cartridge Employees Independent Union as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and completely disestablish Western Cartridge Employees Independent Union as such representative;

(b) Offer William Elliott immediate and full reinstatement to his former or a substantially equivalent position, without prejudice to his seniority and other rights and privileges;

(c) Make whole Wliliam Elliott for any loss of pay he may have suffered by reason of the respondent's discrimination against him, by payment to him of a sum of money equal to the amount he would normally have earned as wages from July 25, 1941, the date of his discharge, to the date of the respondent's offer of reinstatement, less his net earnings during such period;

(d) Give separate written notice to each of its employees who has signed an individual contract of employment, or any modification, continuation, extension, or renewal thereof, that the respondent will not in any manner enforce or attempt to enforce the contract, that the employee is not required or expected because of the contract to deal individually with the respondent or to relinquish in any manner his right to engage in concerted activity, and that discontinuance of the contract is without prejudice to the assertion of any legal rights the employee may have acquired under it;

(e) Post immediately in conspicuous places throughout its plant at East Alton, Illinois, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) to (f) of this Order; (2) that the

respondent will take the affirmative action set forth in paragraphs 2 (a) to (d) of this Order; and (3) that the respondent's employees are free to become or remain members of Chemical Workers Local Union No. 22574, or International Molders and Foundry Workers Union of North America, Local No. 333, both affiliated with the American Federation of Labor, and that the respondent will not discriminate against any employee because of membership in, or activity on behalf of, said organizations;

(f) Notify the Regional Director for the Fourteenth Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

(c) Thereafter, on September 16, 1942, the Board duly served the aforesaid decision and order upon petitioner.

Wherefore, the Board respectfully prays this Honorable Court that it cause notice of the filing of this answer and request for enforcement and of the filing of the entire record in said proceedings before the Board to be served upon petitioner and that this Court take jurisdiction of the proceedings and of the questions determined therein and make and enter upon the pleadings, testimony, and evidence, and proceedings set forth in the transcript of said proceedings and upon the order made thereon, a decree denying the petition to review and enforcing in whole said order of the Board and requiring petitioner and its officers, agents, successors, and assigns to comply therewith.

/s/ Ernest A. Gross,
Ernest A. Gross,
Associate General Counsel, National Labor Relations Board.

Dated at Washington, D. C., this 4th day of December, 1942.

District of Columbia, } ss.

Ernest A. Gross, being first duly sworn, states that he is Associate General Counsel of the National Labor Relations Board; that he is authorized to and does make this verification in behalf of said Board; that he has read the foregoing answer and request for enforcement and has knowledge of the contents thereof; and that the statements made therein are true to the best of his knowledge and belief.

/s/ Ernest A. Gross,
Ernest A. Gross,
Associate General Counsel.

Subscribed and sworn to before me this 4th day of December, 1942.

/s/ Joseph W. Kulkis,
Joseph W. Kulkis,
(Seal) *Notary Public, District of Columbia.*

My Commission expires April 15, 1947.

Endorsed: Filed Dec. 7, 1942. Kenneth J. Carrick, Clerk.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 8155.

Western Cartridge Employees' Independent Union, a Voluntary Association and Trade Union,
Petitioner,

vs.

National Labor Relations Board, American Federation of Labor and Its Affiliated Organizations,
Respondents.

On Petition to Review and Set Aside an Order of the National Labor Relations Board.

ANSWER OF THE NATIONAL LABOR RELATIONS BOARD.

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Seventh Circuit:

Comes now the National Labor Relations Board and, pursuant to the National Labor Relations Act (49 Stat. 449, 29 U. S. C., sec. 151, et seq.), files this answer to the petition filed herein to review and set aside the Board's order.

1. Answering the allegations of the petition relating to the proceedings before the Board, the Board prays reference, for a full and exact statement of the pleadings, findings of fact, conclusions of law, and order of the Board, to the certified record of the proceedings before the Board filed in Western Cartridge Company, a Corporation *vs.* National Labor Relations Board and American Federation of Labor and Its Affiliated Organizations, No. 8142, which case was initiated by the petition of the Western Cartridge Company for review of the Board's order issued in the

proceedings before the Board known as Case No. C-2123 entitled "In the Matter of Western Cartridge Company and American Federation of Labor and Its Affiliated Organizations."

2. The Board denies each and every allegation of error contained in the petition.

Further answering, the Board avers that the proceedings had before it, the findings of fact, conclusions of law, and its order are in all respects valid and proper under the Act.

Wherefore, the Board respectfully prays this Honorable Court that the petition for review be denied, and the Board further prays that this Honorable Court cause notice of the filing of its answer to be served upon petitioner.

/s/ Ernest A. Gross,
Ernest A. Gross,
Associate General Counsel, National Labor Relations Board.

Dated at Washington, D. C., this 4th day of December, 1942.

District of Columbia } ss.

Ernest A. Gross, being first duly sworn, states that he is Associate General Counsel of the National Labor Relations Board, respondent herein, and that he is authorized to and does make this verification in behalf of said Board; that he has read the foregoing answer and has knowledge of the contents thereof; and that the statements made therein are true to the best of his knowledge, information, and belief.

/s/ Ernest A. Gross,
Ernest A. Gross,
Associate General Counsel.

Subscribed and sworn to before me this 4th day of December, 1942.

/s/ Joseph W. Kulkis,
Notary Public, District of Columbia.

(Seal)

My Commission expires April 15, 1947.

1 BEFORE THE NATIONAL LABOR RELATIONS BOARD,

Fourteenth Region.

In the Matter of
Western Cartridge Company, a corporation,
and
American Federation of Labor and its Affiliated Organizations.
} Case No. XIV-C-469.

City Hall,
East Alton, Illinois,
Monday, December 8, 1941.

The above-entitled matter came on for hearing, pursuant to notice, at 10 o'clock a. m.

Before:

Horace E. Ruckel, Trial Examiner.

Appearances:

Jack G. Evans, U. S. Court House, St. Louis, Missouri, appearing for National Labor Relations Board.

Fred Olds, 207 West Main Street, East Alton, Illinois, appearing for American Federation of Labor and its affiliated organizations.

Bryan, Williams, Cave and McPheeters, Boatmens Bank Building, St. Louis, Missouri, by R. H. McRoberts, appearing for the respondent.

Wayne Ely, 10th Floor Commerce Bldg., St. Louis, Missouri, appearing for Western Cartridge Employees Independent Union.

* * * * *

13 Mr. Evans: Mr. Examiner, with respect to the reference to the corporation referred to on page 2 of the complaint, the first paragraph, the parties hereto stipulate that the name of said corporation is the East Alton

Manufacturing Company; that it was incorporated under and by virtue of the laws of the State of Maryland on or about July 8, 1941; that said corporation has the same officers and directors as the respondent corporation and that those same men direct the labor relations policies of the East Alton Manufacturing Company.

Mr. McRoberts: It may be so stipulated.

* * * * *

14 FRED OLDS, called as a witness by and on behalf of the National Labor Relations Board:

* * * * *

Direct Examination.

* * * * *

15 Q. Was the local ever formed?

A. Yes. We had another meeting with Bunzy and Anderson on January 24, 1941, and I gave them a number of application blanks, and then on January 31, 1941, we had a mass meeting at Wood River, Illinois, at which time a great number of men joined the union to be formed and known as the Chemical Workers Union. The charter was applied for on February 4, 1941, and on February 5 the charter was granted to the Chemical Workers Local Union No. 22574.

Q. Was that a Federal Labor Union?

A. That is a Federal Labor Union.

Q. By whom was that union chartered?

A. By the American Federation of Labor. That charter was installed on February 17 and the permanent officers were elected.

Q. Thereafter did you ever meet with management?

A. Yes; I did.

* * * * *

16 You met on February 17, is that right?

The Witness: We met on—our organization?

Trial Examiner Ruckel: March 13.

The Witness: March 13 we met.

* * * * *

Q. (By Mr. Evans.) At that meeting was any request made for recognition or collective bargaining?

A. At that meeting we requested the company to recognize the union as the sole collective bargaining agency for all of its employees coming into the jurisdiction of the union, which was defined as the Chemical Workers in the Smokeless Powder Division.

* * * * *

17 Mr. Schotters stated that he had no authority at this time to go into that phrase until he could take it back to his Board of Directors.

Q. You mean that phase?

A. That phase of recognition.

We submitted to Mr. Schotters or offered to submit to Mr. Schotters our application cards, and he said he would have to take it up with his Board of Directors and meet with us at a later date. A later date was set for March 20.

Q. Did you meet on that date?

A. We did meet on that date?

Q. Where?

A. At the company's office; the same place we met the previous meeting.

Q. Whom did you see at that time?

A. At that meeting we met with Mr. Schotters and Mr. Irish.

Q. And was a request made for recognition and collective bargaining at that time?

A. We again requested recognition of collective bargaining and we offered to submit our applications to the company to check against their payroll, or in whatever—to check against their payroll or against cancelled checks, and Mr. Schotters asked: Could he see one of the applications.

* * * * *

19 A. I stated "Yes" and handed him Emmert E. Anderson's application, and Mr. Schotters stated that this was only an intent, and was not an application.

He passed it over to Mr. Irish, and Mr. Irish looked at the card and handed it back to Mr. Schotters, and Mr. Schotters then handed it back to me.

Mr. Schotters stated that he would have to take this up with his legal department.

Trial Examiner Ruckel: Take up what?

The Witness: The question of recognizing the union. We then set another date for a meeting, which was held on March 22.

Q. (By Mr. Evans.) Where?

A. At the office of the company.

Q. With whom did you meet on that occasion?

A. At that date we met Mr. Schotters and Mr. Casteel, who was introduced to us as the attorney for the company at that meeting.

We asked again that we be recognized as the sole collective bargaining agency for the employees of the Smokeless Powder Division; that they were members; that we had a majority of members of the Chemical Workers Union No. 22574.

Mr. Casteel then asked if he could see one of the applications that we offered to submit for a cross-check of
20 their payroll or cancelled checks. I handed to him the same application that I, at a previous meeting, handed Mr. Schotters; that one of Emmert Anderson.

Mr. Casteel made the same statement that Mr. Schotters had made; that this application was only an intent and was not an application. He contended that the Smokeless Powder Division was not an appropriate unit. However, he stated that before he could recognize our union, he would have to meet the National Labor Relations Board at St. Louis and find out if, by recognizing us on a cross-check, it would be legal or not. He did not know if, by checking, without having a certification of the Labor Board, if it would be legal.

* * * * *

21 Q. (By Mr. Evans.) Thereafter did you file a 9(c) petition with the Labor Board in St. Louis?

A. Yes.

Q. That was on March 25, 1941?

A. I believe that was the R case, wasn't it?

Q. That is what I mean by 9(c) petition.

A. Yes.

* * * * *

37 *Cross-Examination.*

* * * * *

44 Q. Mr. Olds, have charters been granted to any other local unions with employes of the Western Cartridge Company?

A. There has been one.

Q. One?

A. May I look at this?

Trial Examiner Ruckel: You may refresh your recollection.

A. It is the International Molders Union, Local 333—International Molders & Foundry Workers Union of North America, Local 333.

Q. Is that the only local union which has been chartered by the American Federation of Labor with jurisdiction over employes of the Western Cartridge Company?

A. To the present date, in the Western Cartridge Company, that is the only charter granted, outside of Chemical Workers charter granted in the East Alton Manufacturing Company. That is the only one that has been applied for.

* * * * *

45 Q. When did you begin to organize this unit which became the International Molders & Foundry Workers of North America, Local 333, approximately? To refresh your recollection, was that sometime in the month of June 1941?

A. We were really in activities at that time, but we started organization sometime in April; may be the middle of May.

Q. When did you first obtain any applications for membership in that particular local union?

46 A. I couldn't say the exact date, Mr. McRoberts, we obtained applications for membership in that particular union.

Q. Was that, approximately, June 1941?

A. I will say previously to that, because we were getting applications all over the plant and I was trying to segregate them as much as possible as I got them in, and we were getting applications both in the brass mill and the

casting shop, which I had been under the impression it was all casting shop employes, and it later developed they were not all employes of the casting shop, but some at that particular time were in the brass mill.

* * * * *

47 Q. Mr. Olds, in the complaint it is alleged that the Western Cartridge Company deducted dues from the employes' pay and turned over said dues to the Western Cartridge Company employes' independent union. I will ask you whether or not in the course of the negotiations on behalf of the Chemical Workers Local Union, in the early stage of those negotiations, and particularly at a meeting in the Mineral Springs in Alton, Illinois, the Chemical Workers Union asked if the Company—the Western Cartridge Company—would be willing to deduct dues, and the Company's representatives advised they would be willing to deduct dues upon receipt of authorizations from employes in substantially the same manner that they were deducted on behalf of the independent union?

A. No, I don't recall that, because if that was agreed upon it would have surely been in that contract, be-
48 cause we sure wanted it.

Q. Don't you recall that you had that in your draft of the contract?

A. Yes, we did submit it to the Company, and I agree.

Q. Don't you recall the Company proposed to change the form of the application so as to provide that the employe would have a right to cancel the authorization, and advised that if such a change was made they would have no objection to collecting dues and turning them over to the union?

A. I do now recall something on that, that was tentatively agreed to and later denied.

Q. Don't you recall the East Alton Manufacturing Company in finally making this contract with the Chemical Workers Local Union gave you a so-called maintenance of membership clause, and then the checkoff of dues became unnecessary, and that demand was not pressed?

A. We received the maintenance of membership clause at the recommendation of the Mediation Board.

Q. When you received that you did not press further

the checkoff of dues provision? Isn't that about the situation?

A. No, I don't think that was it.

Q. What is your recollection?

A. My recollection is that the Company withdrew that offer—those things were withdrawn, if you recall, what we tentatively agreed to at the Mineral Springs Hotel.

49 Q. But we did tentatively agree at the Mineral Springs Hotel that the East Alton Manufacturing Company would deduct dues upon authorization signed by the employe, upon the condition that employes were given the right to cancel such authorizations at any time?

A. Without a union shop clause, and then it was later withdrawn.

Q. You did not present your demand for a checkoff to the Mediation Board, did you, Mr. Olds?

A. No, we did not.

Q. After you had received this maintenance of membership clause?

A. That is right. We presented it in the beginning—we presented our whole contract in the beginning.

* * * * *

52 EARL HOOPER, called as a witness by and on behalf of the National Labor Relations Board,

* * * * *

Direct Examination.

* * * * *

53 Q. Did you take part in the formation of the Western Cartridge Employees Independent Union?

A. I did.

* * * * *

59 Q. Did you collect dues for the organization?

A. Yes; I collected some dues.

* * * * *

Q. Where did you pay your dues to Wilmering?

A. Wherever I would see him; if it was any place in the plant, I came in.

Q. Did you ever pay him outside of the plant?

A. No; not as I remember. There might have been, but I don't remember.

* * * * *

60 Q. (By Mr. Evans.) Did any foreman ever tell you to stop activities on behalf of this inside union at any time?

A. No.

* * * * *

65 *Recross Examination.*

Q. (By Mr. McRoberts.) Mr. Hooper, are you a
66 member of the Chemical Workers Union?

A. That is right.

* * * * *

Q. (By Mr. McRoberts.) When did you become a member, approximately?

* * * * *

A. Well, I would say in February or March, 1941.

* * * * *

67 VIRGIL KEEFE, called as a witness by and on behalf of the National Labor Relations Board,

* * * * *

Direct Examination.

* * * * *

Q. In 1937 did you work for Western Cartridge Company?

A. Yes, sir.

* * * * *

Q. Were you solicited to join?

A. Yes, sir.

Q. By whom?

68 A. Kenneth Ladd.

Q. Who was he?

A. He was on the organizing committee of this organization.

Q. Did you observe whether or not he went to other employees?

A. Yes, sir.

* * * * *

69 Q. (By Mr. Evans.) Where did that occur, Mr. Keefe?

A. I worked on the header line, and that is a row of machines.

Q. Did he come to you or did you go to him?

A. He came to me.

Q. Was it during working hours?

A. Yes, sir.

Q. Did you observe whether or not he talked to other employes?

A. Yes.

Q. About the same time?

A. Yes.

Q. Did he have cards with him at the time?

A. Yes.

Q. Were those cards similar to Board's Exhibit Number 4?

A. Yes.

Q. Did he have a copy of the constitution?

A. He gave us all a copy—all over the department, before we joined the union, I believe. They passed them out.

Q. Were they like Board's Exhibits 6 and 7?

A. Yes.

Q. Did Mr. Ladd collect dues at the time he signed the employes up?

70 A. When you signed the card up you were supposed to pay him a quarter.

Q. Did anybody else solicit employes that you saw?

A. Leo Ferguson, from the Plant Department, he was over in our department quite a bit.

Q. Is the Plant Department the Maintenance Department?

A. Yes, sir.

* * * * *

Q. About how many were in your department at that time?

A. Approximately 100 or 125.

Q. Of that number about how many did you see Ladd and Ferguson solicit?

Mr. McRoberts: Just what you saw yourself, Mr. Keefe.

A. I saw about twenty-five.

Q. Did you become representative of the union at some time?

A. Yes, sir.

* * * * *

71 Q. Did any foreman or boss make any statement to you with respect to the petition that was going around in your behalf?

A. No, sir.

* * * * *

77 Q. I hand you Board's Exhibit 10, for identification, and ask you to tell what that is.

A. That is the basic agreement.

Q. That is dated August 12, 1937?

A. Yes.

Q. And you signed that agreement?

A. Yes.

* * * * *

Q. Where did you sign that?

A. Down in the main office cafeteria of the Western Cartridge Company.

Q. Who called you down to the cafeteria on that occasion?

A. We had been talking by telephone conversation to the Company and asking for a meeting, and they called
78 this meeting, and Mr. Williams—I believe Senator Williams they called him, attorney for the Company, presented this agreement.

* * * * *

Q. At that meeting was there any discussion as
79 to whether the union represented a majority?

A. No, sir.

* * * * *

85 Q. Were the petitions in your division after the time that you held office passed around in the plant?

A. Yes, sir.

Q. Like it was for your petition?

A. Yes, sir.

Q. Was that the system used for all of the divisions?

* * * * *

A. Yes, my answer is "yes".

* * * * *

Cross-Examination.

* * * * *

89 Q. (By Trial Examiner Ruckel.) As I understand your testimony, Mr. Keefe, it is that Board's Exhibit 8, a letter dated July 22, 1937, to Mr. Olin, was sent by your organization; is that correct?

A. Yes, sir.

Q. And you stated that you tried to get a representative of management on the phone to get together in a meeting; was I correct in that understanding?

A. I don't believe it was referring to this letter; no. It was referring to these demands here.

Q. Well, you wanted a meeting with the company?

A. With the company; yes, sir.

Q. To talk over these demands; that is, to make a contract, is that right?

A. Yes, sir.

Q. How did you try to establish contact with the company?

A. Well, we phoned them.

Q. And you finally had a meeting; is that right?

A. Yes, sir.

Q. Or you did have a meeting?

A. We had a meeting; yes, sir.

90 Q. And that meeting was held long after July 26, 1937, do you recall?

A. No; I don't recall the exact date.

Q. Approximately?

A. A week, I believe, or two weeks.

Q. Now, that would make it the first few days in August or approximately the first of August; is that right?

A. Yes, sir.

Q. Now, was it at that meeting that Mr. Williams presented the contract, Board's Exhibit 10?

A. Yes, sir.

Q. For the first time?

A. For the first time, yes, sir. We didn't sign it that day. We signed it later on; I believe, the next meeting.

Q. Well now, at the meeting at which this was exhibited for the first time, Mr. Williams produced it, is that it?

A. Yes, sir.

Q. What did he say about it?

A. Well, we had heard—we had not seen the copy, but Mr. Manning had gone to St. Louis and talked to Mr. Williams down at the Boatmen's Building.

* * * * *

91 Q. Mr. Williams prepared this contract?

A. Mr. Williams, yes, sir.

Q. Do you know what Mr. Williams said when he presented the contract that day at the meeting? How did he refer to this, if he did?

A. John Olin was talking, and I believe he made the statement that he wished he could find some way that we could get started on our demands, and Senator Williams spoke up and said: "I have the way." And, he presented the basic agreement.

Q. Who said: "I wish there was some way we could get started on our demands?"

A. John Olin.

Q. And John Olin is what?

Mr. McRoberts: Vice president.

The Witness: Vice president.

Mr. McRoberts: Of the Western Cartridge Company.

92 Trial Examiner Ruckel: While we are on the subject, may it be stipulated that F. W. Olin is the president?

Mr. McRoberts: President, and John Olin is vice-president and Mr. Spencer Olin is secretary-treasurer.

Q. (By Trial Examiner Ruckel.) Now, what further did Mr. John Olin say, if anything, after he said, "I have the way"?

Mr. Ely: Senator Williams said "I have the way."

Trial Examiner Ruckel: I am sorry.

Q. (By Trial Examiner Ruckel.) After Mr. Williams said that?

A. He said, "Let us have it." "We have the way." And, Mr. Williams presented the basic agreement.

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95 Q. (By Mr. Ely.) You say you didn't want to sign this basic agreement that Senator Williams presented to you?

A. That is right.

Q. Did they take a vote on it there at that meeting?

A. Yes, sir.

Q. Did the majority vote to sign it?

A. The first time the majority voted not to sign it, and then we had another meeting among ourselves. In the meantime I believe our secretary and treasurer, Mr. Sullivan, and I don't know,—but he did bring it back to us; him and Mr. Manning said the company would not agree to any of our demands unless we did sign that.

Q. Had Mr. Manning been in consultation with Mr. Williams before that?

A. Yes, sir.

Q. And he told you that the company would not meet your terms unless you signed this resignation; is that right?

A. That is right.

Q. Then did you take another vote on it?

A. Yes, sir.

96 Q. And the majority of your board voted to sign it?

A. To sign it; yes, sir. Four to two; yes, sir.

Q. That was after you received your advice from Mr. Manning?

A. Yes, sir.

Q. Originally the board voted to turn it down?

A. Turn it down; yes, sir.

Q. Mr. Manning then made his explanation and advised you to sign it, did he?

A. I wouldn't say he advised us to sign it.

Q. But he advised you you would not get what you were after unless you did sign it?

A. Yes.

* * * * *

133 ROBERT CARROLL, called as a witness by and on behalf of the National Labor Relations Board:

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Direct Examination.

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Q. You work in the smokeless powder division?

A. Yes, sir.

Q. About how long have you worked for the company?

A. I went to work at the Western in 1935, the 9th day of April.

Q. Anybody ever ask you to join the Independent Union?

A. Yes, sir.

Q. Who was that?

A. Berkley Wilmering.

Q. Who is he?

A. He was from smokeless powder.

Q. At that time where were you working?

A. Fulmanite mixing department.

Q. Is that in the smokeless powder division?

A. No; that is here on this side, at the Western.

134 Q. Was that during working hours?

A. Yes, sir.

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137 Q. Tell us how you came to be a representative?

A. Well, they got out a petition for me and I didn't want it. I told them I didn't want it at all, any part of it. So, they went—

* * * * *

And they went ahead and held an election and elected me anyhow.

Q. (By Mr. Evans.) Now, was there a petition for your nomination as representative?

A. Yes, sir.

Q. Where was the petition signed?

A. It was signed by the employees down there in that division.

Q. Did the petition pass around during working hours?

A. Yes; it did. Some of them signed it during 138 working hours.

Q. Was there actually an election after this petition was signed, or were you seated by reason of the petition?

A. Well, I was really seated by the petition; by the signers on the petition.

Q. In other words, nobody else had a petition?

A. No; nobody else had a petition against me.

Q. After you became representative, did you solicit any members in the Independent Union?

A. Yes. I talked to several of them that didn't belong. There was only a few that signed up.

Q. Where did you do your soliciting?

A. Well, I done some of it at noon hour, some of it during working hours.

Q. About how many did you solicit during working hours?

A. Well, I would say about six.

Q. Did you collect any dues?

A. Yes; I collected some dues.

Q. Did you collect those during working hours?

A. Well, some of them I did, yes, and some I didn't.

* * * * *

145 Q. When did you join the A. F. of L. Union, Mr. Carroll?

A. Well, I don't remember the exact date on it.

Q. Approximately?

A. It was last spring. It was along in March, I believe.

Q. That is the Chemical Workers Local that you joined?

A. Yes, sir.

* * * * *

148 Q. You work for the Western Cartridge Company?

A. I did, but I work at East Alton Manufacturing Company for the time being.

Q. About how long have you worked at the plant?

A. Well, altogether I would say fifteen years.

Q. Were you working there in 1933?

A. Yes, sir.

Q. Was there any effort by any union to organize at that time?

* * * * *

A. Yes, sir.
Q. (By Mr. Evans.) What organization?
A. The C. I. O.

* * * * *

153 Q. (By Mr. Evans.) Anybody ever solicit you to join the Independent Union?
A. Yes, sir.
Q. About when was that?
A. When they first started. I think it was around in 1937.
Q. Who solicited you?
A. Huck Imel.

* * * * *

154 Q. Where were you solicited by Imel?
A. In the cap department.
Q. Any other employees solicited by Imel at that time?
A. Yes, sir.
Q. About how many others did you observe?
A. Oh, I would say around 50.
Q. Did he have cards at that time?
A. Yes, sir.
Q. Were they cards similar to Board's Exhibit 4, which I hand you?
A. Yes, sir.
Q. Did Imel work in your department at that time?
A. Yes, sir.
Q. Was the foreman present when this activity was going on?
A. Yes, sir.
Q. Did it take place during working hours?
A. Part of it did and part of it didn't.

* * * * *

155 Q. Were you ever elected a representative?
A. Yes, sir.
Q. And when did that occur?
A. It was in 1933. I am sure it was in 1933.

* * * * *

Q. Was there a petition passed around for your nomination as representative?

156 A. Yes, sir.

Q. How was that passed around?

A. Well, I went to the office and had a petition made out through the stenographer, and I started out in my department from one member to the other, and it was passed out through the other departments in my division.

Q. Did these activities occur during working hours?

A. Some of it did and some of it didn't.

* * * * *

Q. Were you elected to be chairman, vice-chairman, secretary-treasurer or anything like that?

A. I was elected as secretary-treasurer for six months.

Q. And when did that occur?

A. That was in 1940, I believe.

Q. In August, 1940?

A. Yes, sir.

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166 *Cross-Examination.*

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180 FRANCIS BUNZY, called as a witness by and on behalf of the National Labor Relations Board:

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Direct Examination.

* * * * *

Q. You work in the smokeless powder division of the plant?

A. I do.

Q. About how long have you worked there?

A. About a year and a half.

Q. Have you worked for the company longer than that?

A. Yes. I worked with the company since February, 1935.

Q. Before that you worked in one of the other divisions in the plant?

A. Yes.

Q. In 1937 did any labor organization start to
181 organize employees of the company?

A. The Independent Union started in 1937.

Q. Any other organization?

A. Well, the C. I. O. was making contacts down there at that time.

Q. Did you attend any C. I. O. meetings?

A. Yes. I attended one in the Faulstich Building, in Alton.

Q. Was that before or after the start of the Independent Union?

A. Well, they were about the same time. There wasn't a week's difference either way. I just couldn't say about when it was.

Q. Did anybody solicit you to joint the Independent Union?

A. Yes; Leo Ferguson.

Q. And when did that take place?

A. In the plant department building on the western side.

Q. Did he give you a card similar to Board's Exhibit 4?

A. Yes.

Q. Did you sign it?

A. Yes.

Q. Do you know whether or not he solicited other employees in your department about that time?

A. Yes; he did.

* * * * *

188 A. After I went back in the smokeless powder, I was standing in the yard talking with Leo Ferguson, pipefitter foreman now, and Mr. Wortz was coming back on this meeting,—oh, I didn't mention Mr. Wortz; he was present with Mr. Irish and Mr. Hamilton and Mr. Schotters.

And he called me down to his office. He asked me to come down to his office. And I went on down there.

Q. Was anybody else present besides you and Mr. Wortz?

A. Just Mr. Wortz and I.

Q. What was said at that time?

A. Why, he told me to come in and sit down.

And he said, "Bunzy, I have heard your name a lot," he said, "and I was surprised to see you when you came in the office over here. I expected a man about 50 years old, and a rough sort of a fellow, being mixed up with a union like you are."

And he said, "You are a young fellow, and you have a nice personality," and, I don't know, a lot of stuff, about a goodlooking fellow, and the fellows liked me, and this and that.

And he said, "How old are you?"

And I said, "28."

And he said I could go places with the company if I would make myself right with them. He said if I would come down to school I could go Pete Brown and he
189 would teach me how to handle business, or something.

And I told him I didn't want it.

And he said how come that we want a union, and what did we want by it?

And I told him that we wanted working conditions.

And he said, "Well, you fellows are intelligent. Why don't you come in as a committee and talk with me about it instead of going over to East St. Louis and get a pot-bellied racketeer to do your business for you?"

And he gave the union hell at great length. He just said it was no good and anyone that belonged to it was no good; that it was a bunch of guys that were bosses and wouldn't work, and they would have the good fellows carrying them through.

So he said if we would consider it, he would show us a contract that they had with other companies—that he had took part in with other companies. I believe he mentioned Bethlehem Steel or some other steel company.

And I told him no, that I didn't care for it.

And he asked again if I would care to come down to school.

And I said no; if I would come down to school and done go to union meetings and work with the fellows, it would just be playing both ends against the middle and it wouldn't

last, so I would go ahead with the union, and I just
190 thanked him and went out.

Q. Did he mention anything as to what would happen to your dues?

A. Oh, he said, "How does them guys get the money? How do they get to live like they do off of you fellows' wages," he said. "Why don't you have a union of your own," he said. He said, "We know our troubles here and our jobs. We can straighten them out ourselves instead of having to walk the streets and striking." He said, "We would be like the Monsanto Chemical Works and the automobile companies in this locality."

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227 LOWELL JONES, a witness, called by and on behalf
228 of the National Labor Relations Board:

* * * * *

Direct Examination.

* * * * *

Q. You work for the Western Cartridge?

A. Yes sir.

Q. Do you work in the brass mill?

A. Brass mill shipping.

Q. About how long have you worked for the Company?

A. About eight years.

Q. Did anybody solicit you to join the independent union?

A. I joined, yes.

Q. About when was that?

A. I believe it was in the latter part of 1937 or the first part of 1938, I am not sure.

Q. Who was it solicited your membership?

A. I believe it was Cletis Baker.

* * * * *

229 Q. He talked to you on the job about that?

A. I believe he did, yes.

* * * * *

Q. Were you ever elected as a representative for the independent?

230 A. Yes sir.

Q. About when did that occur?

A. I believe it was in August 1940.

Q. How did that come about?

A. I circulated a petition.

Q. Where did you get the petition?

A. I believe Mr. Baker gave them to me.

Q. What division was this?

A. Division Number 4.

Q. Did you pass the petition around in Division Number 4?

A. Yes.

Q. Was that done during working hours?

A. Yes sir.

* * * * *

235 Q. Do you know whether copies of these were distributed to employes?

A. I believe we did distribute them, or at least we gave them to the advisory committeemen.

Q. (By Trial Examiner Ruckel.) Which advisory committee do you refer to?

A. Each division representative most of the time had one or several departments which he was representative of, and in each department—we always tried, if there wasn't one elected, to appoint someone who was fairly well known in that department.

Q. When you say advisory committee are you referring to the executive committee?

A. We called it advisory committee. Where the representative wasn't handy or he had a man on the advisory committee he would take it up as a grievance himself with the employe or he would call in a representative.

Q. Was the advisory committee separate and apart from the executive committee?

A. Yes, sir.

Q. Two different committees?

A. Yes, sir.

Q. (By Mr. McRoberts.) There would be a different advisory committee in each department, is that right, Mr. Jones?

236 A. Yes, sir.

Q. To advise with the representatives who were on the executive committee of the independent union?

A. Yes, sir.

Q. (By Mr. Evans.) Was there just one advisory committeeman in each department?

A. No, where the department was large and they worked shift work, we usually tried to arrange so there would be one on each shift.

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238 Q. Did the board of the Independent Union discuss the question of whether to participate or take part in a proposed election by the Labor Board in the smokeless powder division?

A. I don't believe we ever discussed whether we would enter it or not; no.

Q. Did you discuss whether you would not enter it?

A. Well, I believe we received a letter from the 239 Labor Board asking someone to appear at that Board, and we, or the executive board, instructed the secretary and the chairman to go and we waive our claims to smokeless powder.

Q. Thereafter were you called to the office of the company?

A. No, not in the office, no, sir.

Q. Did anybody, any representative of the company talk to you about it?

A. Well, I believe Mr. Ebberts and Mr. McRoberts, and I believe Mr. Schotters had a meeting in the dinging room of the main office.

Q. And Mr. Ebberts was an attorney for the company?

A. Yes, sir.

Q. And Mr. McRoberts is the attoney for the company sitting at the table there?

A. Yes, sir.

Q. Do you know about when that occurred?

A. Well, I believe it was—I don't know; about the 20th of April, I believe, something like that.

Q. Who else was there besides yourself?

A. The executive board.

Q. Of six members?

A. I believe so; yes, sir.

Q. What was said at that time?

A. Well, I believe Mr. Ebberts asked us if we knew
240 what we had signed, and I think—I believe he said—asked us if we were or we would—oh, I don't know the word he did use,—repudiate the letter, and we told him that we would not.

Trial Examiner Ruckel: What letter do you mean?

The Witness: The letter we wrote to the Labor Board waiving our claims on the smokeless powder.

Q. (By Mr. Evans.) What else was said at that time?

A. Well, I believe that was about all. All he wanted us was to deny the letter, to say that we didn't know what we was doing, or something like that.

Trial Examiner Ruckel: Who is the "he" now?

* * * * *

The Witness: Mr. Ebbert or McEbbert.

Q. (By Mr. Evans.) Was there any further meeting in this regard?

A. Yes. We had another meeting with McEbbert or Ebbert,—I get those Mc's in the wrong place. I think it was about the same thing. He wanted us to repudiate that letter, and we still refused to do it.

Trial Examiner Ruckel: Who was present on that occasion?

The Witness: The executive board of the Independ-
241 ent Union.

Trial Examiner Ruckel: And who on behalf of the company? Mr. McRoberts was there?

* * * * *

The Witness: Only Ebbert.

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Q. (By Mr. Evans.) Did Mr. Dawson ever talk to you about it?

A. Yes, sir.

Q. When did that occur?

A. About the 22nd of April, I believe.

Q. That was while the hearing was going on; the representation hearing?

A. It was either the day of or the day before.

242 Q. Who was Mr. Dawson?

A. Mr. Dawson was personnel man at the time I was elected, I think, and he—

Q. Excuse me. Who else was present when you and he talked?

A. Just the two of us.

Q. Where did the conversation take place?

A. In the factory office.

Q. How did you happen to be in the factory office?

A. Well, I wasn't. I was on a job, and I believe the foreman said that someone wanted to see me over in the factory office.

Q. All right. Then, what occurred? What was said when you got there?

A. Well, Mr. Dawson said—he shook hands with me and said he hadn't seen me in a long time, and then we went in the office, and he said that he realized that we had not accomplished everything that we should have, but there was great possibilities there to make a go of the Independent Union, and I believe he asked if we were going to appear at the trial.

Trial Examiner Ruckel: What trial did you understand him to refer to?

The Witness: To the trial to determine whether the smokeless power was an appropriate bargaining unit.

243 Q. (By Mr. Evans.) What did you tell him?

A. Well, I told him I didn't know whether we were or not. At that time we hadn't decided, I guess.

Q. Did you have any conversation with Mr. Hamilton about it?

A. No; not concerning that. At the time I talked to Mr. Hamilton was in the lunchroom, at the cafeteria restaurant.

Q. When was that?

A. The day of the trial, on the 23rd, I guess, of April.

Q. Of April this year?

A. Yes, sir.

Q. Who else was present at that time?

A. Well, the cafeteria was full. They were eating lunch at that time.

Q. I mean, who else was present that heard this conversation?

A. I don't believe there was anyone that heard it.

Q. What was said at the time?

A. Well, he told me that we were supposed to be at the trial at one o'clock. I started out to the gate. When I got out to the gate I met Richard Hartingg who at that time was secretary-treasurer, and asked him what he was going to do.

And he said, well, Hamilton had told him to come out too. Well, we decided that we would not go unless we
244 were subpoenaed. Then we were subpoenaed.

Q. Who handed you the subpoena?

A. Well, I don't know. I guess he was a deputy sheriff or something.

Q. Was that at the gate that that occurred?

A. Yes.

Q. Did you go to the hearing?

A. No, sir.

Q. Did you talk to any representative of the company after you received the subpoena?

A. No, sir.

Q. Did you talk to Mr. Ebbert after that?

A. Well, I don't know whether they couldn't locate or they didn't locate all of the representatives of the union the same day that Mr. Harting and me was subpoenaed, and we were told that we would be used around 10 o'clock the next morning.

Well, the representatives—the executive board met in the office of the independent union and we all went over there in a body, and when we got out in front of the—where the trial was being held on Church Street, in East Alton, Mr. Ebbert asked us if we had changed our minds, and we said, "No," and he dismissed us.

Trial Examiner Ruckel: By changing your minds, you understood him to mean what?

245 A. Well, the letter which we waived our claims to the powder mill.

Trial Examiner Ruckel: You had not changed your mind not to repudiate the letter; is that the idea?

The Witness: Yes; we had not changed our minds, no.

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251 Q. Prior to that hearing the Western Cartridge Employees Independent Union had received a letter or request from Mr. de Schweinitz, the Regional Director of

the Labor Relations Board, asking your representatives to call; is that correct?

A. Yes, sir.

Q. And you had a meeting of the executive board of your union and delegated to Mr. Chapman, Mr. J. B. Chapman and Mr. Richard Harting the duty of meeting with Mr. de Schweinitz?

A. Yes, sir.

Q. And did you then delegate to your attorney, Mr. Weisman, the job of going with them and advising them on that matter?

A. Yes, sir.

Q. The Independent Union was then being represented by Mr. Emanuel Weisman; is that correct?

A. Emanuel Weisman, yes, sir.

Q. He is an attorney of Alton, Illinois?

A. Yes, sir.

Q. Representing several American Federation of Labor unions, I believe, doesn't he?

252 A. Well, I couldn't say about that. I have heard it.

Q. But you don't know?

A. I couldn't say for sure.

Q. Following that meeting, it is your understanding that the original, of which this Respondent's Exhibit 3 is a copy, was written and signed and sent to Mr. de Schweinitz ?

A. Yes, sir.

Q. Now, that letter was not submitted to your executive board before it was sent out, was it?

A. We drew it up at the meeting.

Q. You did?

A. I believe we told Mr. Weisman that we felt, as we didn't have any representation to speak of in the smokeless powder, that we weren't going to contest it in any way. If they wanted another union, why it was all right with us.

Q. Following those instructions, this letter was written and sent?

A. Yes, sir.

Q. And on the morning when the meeting was held in the cafeteria at the main office building, Mr. Ebbert and Mr. Schotters and I were present on behalf of the company

and the members of your executive board were present on behalf of the Independent Union, and we asked you whether this letter had been authorized by the board; that is in substance what was asked you, wasn't it?

253 A. I believe so.

Q. And whether your board had seen it before it was sent out and whether the board approved it and whether the board was going to stand by it or whether they were going to enter the union's appearance in the proceeding and contest the charges?

A. Yes, sir.

Q. And I believe you told us in substance at that meeting that while the Board had not formally authorized this particular letter, it was the decision of the Board to stand behind it nevertheless?

A. Yes, sir.

* * * * *

264 JAY D. CHAPMAN, called as a witness by and on behalf of the National Labor Relations Board:

Direct Examination.

Q. (By Mr. Evans.) Will you state your name and where you live?

A. Jay D. Chapman, 400 Lincoln, East Alton.

Q. You work for the Western Cartridge Company?

A. I do.

Q. You are the president of the Independent Union?

A. I am.

Q. How long have you been president, Mr. Chapman?

A. Since August, 1940.

Q. I hand you Board's Exhibit 13 for Identifica-

265 tion and ask to state whether or not that is a copy of the working agreement entered into between your organization and Western Cartridge Company on or about June 2, 1941?

A. Yes, sir. This appears to be the working agreement.

* * * * *

Q. (By Mr. Evans.) Mr. Chapman, have you and the executive board of the Independent Union and representa-

tives of the company been negotiating for a working agreement for some time?

A. Yes, sir.

Q. So far as you know, was that the first working agreement signed between the two parties?

A. Since we signed the basic agreement; yes, sir.

Q. That is what I mean. In your negotiations at any time was any question raised as to the majority status of the Independent Union?

A. Well, I would say that the executive board left the impression that we had the majority; yes, sir.

Q. Was any proof of majority submitted to the
566 company in your negotiations for the working agreement?

A. No, sir.

* * * * *

267 Q. Did the working agreement cover the same groups of employees as the basic agreement?

A. With the exception of smokeless powder; yes, sir.

Q. Well, did the contract entered into on June 2 or June 4, 1941, eliminate the smokeless powder division from consideration?

A. No, sir. It included all employees of the Western.

Q. No exclusions at all are listed?

A. No, sir.

Q. Was there any understanding at that time of any exclusions?

A. I don't think there was; no, sir.

Q. Did it exclude office employees?

Mr. McRoberts: I think the contract speaks for itself as to what it covers.

Mr. Evans: I am talking now about any understanding as to what the parties meant.

Trial Examiner Ruckel: Any understanding in addition to the contract?

Mr. Evans: That is right; any oral understanding as to what employees were covered by the contract.

268 Trial Examiner Ruckel: He may answer.

A. No; I don't think there was.

Q. (By Mr. Evans.) There was no understanding at all?

A. No, sir.

Q. Were you later informed by representatives of the company that the contract entered into on June 4, 1941, would not cover the smokeless powder division?

A. I don't think so.

Q. May I see your minutes for July of 1941? I refer you to the minutes of July 9, 1941, and ask you to read the paragraph beginning with "Mr. Schotters".

Mr. McRoberts: May I see that first?

Mr. Evans: Yes.

Mr. McRoberts: Do you want just that paragraph read into the record?

Mr. Evans: Yes.

Mr. McRoberts: I have no objection to it.

A. (Reading.) "Mr. Schotters stated that the East Alton Manufacturing Company had been formed and would take over the so-called smokeless powder division. As this was a separate company, the independent union was not the bargaining agent for those employees under the blanket agreement."

Q. (By Mr. Evans.) Was the blanket agreement there referred to the agreement entered into on June 4, 1941,
269 or would that include both the basic agreement entered into in August, 1937, and the working agreement entered into in June, 1941?

A. I think that this refers to the raise that was coming up on 7-13, I think.

Mr. McRoberts: I think the language speaks for itself. I don't believe we need further interpretation.

A. That is what that has reference to. You see, on 7-13, we had been granted a raise that we were negotiating for, and this meeting was on July 9, and the raise took effect on the 13th, I think it was, and it would not be effective in the smokeless powder.

Trial Examiner Ruckel: Well, it is your understanding that the language does not refer to this working agreement, Board's Exhibit 13?

The Witness: Yes, sir.

Trial Examiner Ruckel: It does refer then to Board's Exhibit 13?

The Witness: This paragraph refers to that raise that was coming up.

Trial Examiner Ruckel: The paragraph you just read into the record?

The Witness: Yes, sir; that is what this paragraph refers to.

Mr. McRoberts: The blanket raise effective July 13,
270 Mr. Examiner, of 5 cents an hour, something like that.

The Witness: Yes.

Q. (By Mr. Evans.) Was it your understanding, Mr. Chapman, that it was just the raise that would no longer come under this blanket agreement, or was it all matters pertaining to wages, hours and working conditions of the smokeless division that would no longer come under that agreement?

A. When he made this statement?

Q. Yes.

A. I took it for granted that he meant the raise that was coming up on the 13th.

Q. So, as far as your understanding is concerned, the Independent Union is still the bargaining agent for the smokeless powder division?

A. For all employees of the Western, and if that is the East Alton Manufacturing Company, I would say no.

Q. Then it is your understanding that the date of the formation of the East Alton Manufacturing Company, or as of that date, the Independent Union was not any longer the bargaining agent for its employees?

A. That is right.

Q. And you take that from what Mr. Schotters said at that meeting?

A. This meeting was concerning that raise.

Q. Well, if you didn't obtain that understanding
271 from that meeting, where did you obtain that understanding?

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Trial Examiner Ruckel: Does the Board contend, in spite of its contract with the charging union, that the respondent is still recognizing the independent as the representative of the employees in the smokeless powder division; is that the contention?

Mr. Evans: I believe that up to July 9, 1941, the company's position was that the independent union contract covered the smokeless powder division.

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320 BLANCHE GRISSON, a witness called by and on behalf of the National Labor Relations Board:

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Direct Examination.

* * * * *

Q. You work for the Western Cartridge Company?
A. Yes, I do.
Q. What department do you work in?
A. Metallic manufacturing.
Q. Do you know a man named Melvin Taylor?
A. Yes sir.
Q. Did he ever solicit you to join the Independent?
A. Yes sir.
Q. When did that occur?
A. It occurred about the first part of August.
Q. Of what year?
A. This year.
Q. Where did it take place?
A. At my machine.
Q. Was that during working hours?
A. Yes sir.

* * * * *

321 Q. Did he solicit you to join the independent union at that time?
A. Yes sir.
Q. Did he hand you a card?
A. No sir.
Q. Did he ask you to sign a wage assignment?
A. Yes sir.
Q. Did you sign either one?
A. No sir.
Q. Do you know whether or not he talked to any of the other women in that department?
A. Yes sir.

Q. At about that time?
A. Yes sir.
Q. About how many others did you observe him talking to there there?
A. There are 18 on our job, and I saw him talking to—I could see six on the cappers; that is the machines that was right back of us.
Q. Did he have these application cards and wage assignment slips in his hand?
A. I saw wage assignment slips, but no cards.
322 Q. Did he just go from one girl to the next on the line?
A. Yes sir.
Q. Was the foreman about when this was going on?
A. He passed by several different times while he was talking to the other operators.
Q. What was the foreman's name?
A. Floyd Bennett.
Q. Did Bennett make any effort to stop Taylor?
A. Not at that time.
Q. Did Taylor come back and talk to you later?
A. He came back the next morning.
Q. What did he say to you at that time?
A. He asked me if I had changed my mind about joining the union.
Q. What did you tell him?
A. I said "No sir".

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331 FRANK LOVELL, a witness, called by and on behalf of the National Labor Relations Board:

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Direct Examination.

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Q. You work for the Western Cartridge Company?
A. Yes sir.
Q. In what department?
A. I am in the metalic inspection; that is in the metalic manufacturing.

Q. Do you do the same type of work as Melvin Taylor?
A. Practically the same.
Q. What is his job?
A. He inspects shells from, I guess, two hundred machines, different types of shells and different operations.
Q. Does he supervise the work of any other men?
A. No, sir, he is just by himself.
Q. Did he ever solicit employes to join the independent union in your presence?
A. Yes sir.
332 Q. About when did that occur?
A. Just about the first of August.
Q. (By Mr. McRoberts.) Which year?
A. This year.
Q. (By Mr. Evans.) 1941?
A. Yes sir.
Q. Where did that occur?
A. Right at work.
Q. About how many employes did you observe him solicit?
A. On the job, I inspect, I had 20 machines, he solicited each of those operators, and have six adjusters, each one of those—I imagine I saw him approach twenty others at the machines.
Q. Was this during working hours?
A. Yes sir.
Q. Was the foreman around the department at that time?
A. His foreman is Youngbluth, foreman of metalic inspection, and he is there all the time on the day shift, and that is when it happened.

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339 WILLIAM GENT, JR., a witness called by and on behalf of the National Labor Relations Board:

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340 *Direct Examination.*

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Q. You are in the Smokeless Powder Division?
A. That is right.

Q. About how long have you worked at the plant?
A. At the East Alton Manufacturing Company?
Q. At the East Alton Manufacturing Company?
A. It was two years last October.
Q. Are you a foreman of any kind?
A. Yes.
Q. What kind?
A. Right now they call it sub-foreman.
Q. (By Trial Examiner Ruckel.) What?
A. Right now they call it sub-foreman.
Q. (By Mr. Evans.) What department?
A. Hardening; ball powder hardening.
Q. How long have you held such a job?
A. About four months I would say, roughly.
Q. Is that an hourly jaid job?
341 A. Yes sir.
Q. Did you ever sign a card for the A. F. of L.?
A. Yes sir.
Q. About when?
A. About March.
Q. 1941?
A. 1941, yes sir.

* * * * *

Q. Did you ever have any conversation with Mr. Wortz about your membership in the union?
A. You mean if I asked him if I should join or not?
Q. (By Trial Examiner Ruckel.) Either before or after you joined, did you have any conversation in which the union was mentioned, or your having joined it was mentioned?
A. I have; one particular time he talked to me about wearing the union badge and he says that it wasn't a very good idea for a foreman to wear a union badge.
Q. (By Mr. Evans.) You were wearing a union badge at the time?
A. Yes sir.
Q. When did that conversation occur?
A. Right then—I can't say specifically when he did
342 talk to me about it.
Q. About when?
A. It was before the election, though.

Q. Before the Labor Board election?
A. Yes sir.
Q. Where did that conversation take place?
A. It took place in Mr. Wortz' office.

* * * * *

Q. Did he ever ask you to sign a withdrawal from the A. F. of L. union?
A. Yes, he did.
Q. When did that take place?
A. That was still before the election, too.
Q. Where?
A. In his office.
343 Q. Was anybody else there at the time?
A. No, there was not.
Q. (By Trial Examiner Ruckel.) Was this the same or another conversation?
A. This is a different conversation.
Q. (By Mr. Evans.) What was said at that time?
A. He told me that he felt the best thing for me to do would be to take a withdrawal from the union; he said they couldn't do anything for me, and it wasn't going to be A. F. of L. down there.
Q. (By Trial Examiner Ruckel.) It wasn't what?
A. The A. F. of L. was not going to get in there after the election.
Q. (By Mr. Evans.) Was anything else said at that time?
A. No, I don't believe there was.
Q. Do you recall whether or not anything was mentioned as to Otten and Bunzy?
A. Yes, he told me Mr. Bunzy and Mr. Otten could not do anything for me, that the Company could do more for me than they could.
Q. Bunzy is president of the local?
A. At this time, yes.
Q. And Otten was what?
A. Recording secretary.

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345 *Cross-Examination.*

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346 Q. When Mr. Wortz told you he thought it was a bad policy for a foreman to wear a button did he ask you to withdraw from the union at that time?

A. No, sir, he did not.

Q. You say you did sign a withdrawal from the union?

A. Yes sir.

Q. Whatever happened to that?

A. Mr. Wortz got that.

Q. After that what happened to it?

A. I don't know what happened to it then.

Q. You did not withdraw?

A. No, sir. I wrote in to the union after I found out where I made my mistake and told them not to accept any written letter containing my name on any such matters, and at that time I did write that withdrawal it was with the understanding that foremen were allowed in the union.

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347 Q. Mr. Wortz, you say, did tell you that he thought foremen should not be members of the same union that men under them belonged to, is that correct?

A. No, he didn't say anything of that type to me.

Q. He just said you should not wear a button?

A. That is right.

Q. At that time he did not say you should not be members of the same union?

A. No.

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348 Q. (By Mr. McRoberts.) He just asked you to withdraw, and you withdrew and signed a withdrawal?

A. That is right.

Q. But you never heard of that withdrawal after that time?

A. No.

Q. It was never sent in to the union that you know of?

A. It was never sent in to the union, no sir, that I know of.

Q. Was it in pen and ink, you say?

349 A. Yes.

Q. Did you write it out?

A. Yes. I have a duplicate of it at home.

Q. Pardon?

A. I have a duplicate of it at home.

Q. It just said "I withdraw from the A. F. of L.", or something to that effect?

A. Yes. I wrote it to Mr. Otten, recording secretary.

Q. (By Trial Examiner Ruckel.) You wrote it to who?

A. Mr. Otten, recording secretary of the A. F. of L.

Q. But you did not send it to him?

A. No sir.

Q. You sent it to who?

A. I gave it to Mr. Wortz and he said he would take care of that.

Q. (By Mr. McRoberts.) After giving it to him that is the last you saw or heard of it?

A. Yes sir.

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350 JOHN B. WILDT, a witness, called by and on behalf of the National Labor Relations Board:

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Direct Examination.

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Q. You work for the East Alton Manufacturing Company?

A. That is correct.

Q. And you have worked in the Smokeless Division for about how long?

A. Since December 31, 1940.

Q. Shortly after you were hired there and started to work did you have any conversation with any foremen about unions?

A. When the A F of L started in the smokeless powder division, at the time,—that was in January—my foreman—supposed to be a supervisor or foreman, I don't know just what title he does have.

Q. (By Mr. McRoberts.) What was his name?

Q. (By Mr. Evans.) Tell us his name.

A. L. Canhan.

Q. C-a-n-h-a-n?

A. That is right; he came to the office in the storeroom and called the boys that were working on the store-
351 room floor in one by one, and the foreman was in there, Bill Jones, and he asked us to think it over before joining any organization.

Q. (By Trial Examiner Ruckel.) He called you one at a time?

A. One at a time, yes.

Q. From where?

A. From off of the stockroom floor.

Q. And called you to where? The office?

A. The storeroom office.

Q. The storeroom office?

A. Yes sir.

Q. Who was present there?

A. Bill Jones.

Q. Canhan called you and told you to go to the office?

A. No, he called us in the office. The office is right off the storeroom floor.

Q. The foreman there is Jones?

A. Yes sir.

Q. (By Mr. Evans.) What did you say Jones' position was?

A. Jones was foreman of Number 5 storeroom.

Q. How many employes at that time were called into the office?

A. There were three of us.

Q. You say there were three of you?

A. Yes sir.

352 Q. Were you asked to sign an individual contract after you started to work for the company?

A. I was; yes.

Q. About when was that?

A. That was the first of May, 1941.

* * * * *

Q. And when you returned did you have any conversation with anybody about it?

A. Not that day; no.

Q. Did you at any time?

A. Yes; I had a conversation with my foreman, Mr. Canhan, about the contract and about the union.

Q. About how long after your signing of the contract?

353 A. Well, I would say that was about two or three days.

Q. Where did that conversation with Canhan take place?

A. The conversation with Canhan took place at No. 5 storeroom.

Q. Who else was present?

A. There was three boys on the floor but I don't think they heard any of the conversation.

Q. What was said at that time?

A. Mr. Canhan asked me if I had signed my individual contract, and I told him yes.

Q. What else was said?

A. And Mr. Canhan and I discussed the union, or the A. F. of L., and I told him I joined the A. F. of L.

And, he asked me if I thought it would do me any good.

And I told him I wasn't sure; that I belonged to the A. F. of L. organization once before in Wood River and I didn't think very much of it, but being as how the rest of the boys in the storeroom had joined the A. F. of L., why I wasn't going to be one to stay in there and not join it.

Then the conversation just went from one thing to the next.

Q. Well, tell us what else was said.

A. Well, Mr. Canhan went ahead to tell about his brother-in-law in Washington that works in a lumber mill, and he said that they were out on strike out there

354 about six months out of the year, and he asked me if I wanted to be like that; be out on strike about half of the time.

And I told him, no.

Q. Anything else said?

A. Mr. Canhan asked me if I thought the A. F. of L. would do me any good, and I told him yes, I did.

And Mr. Bunzy at the time was—they had a wage scale at the Monsonto Chemical Company, and he showed me the rate scale for the stockroom clerks of that company, which

was 92 cents an hour, and I told Mr. Canhan that I would join any organization for 92 cents an hour.

Q. Anything else said?

A. That is about all I recall. We discussed this individual contract.

Q. What was said about that?

A. And Mr. Canhan showed me where if I had this contract, where it would mean about five cents more on the hour, by having this individual contract, than if I joined an organization and lost it.

Q. Was anything said about the Independent Union?

A. No, sir—or, wait a minute; I will take that back. Mr. Canhan said that he thought the Independent Union could do more for me than an outside union.

Q. Did you wear an A. F. of L. button in the plant?

A. I did; yes.

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371 JADY B. CHAPMAN, thereupon resumed the witness stand:

Direct Examination (Continued.)

* * * * *

388 Q. After the election on May 6, 1941, did the Company continue to deduct dues for employes in the smokeless powder division and include those among the dues turned over to you each month?

A. After the election?

Q. After the election in the smokeless powder division on May 26th, 1941?

A. Yes sir.

Q. Is the Company still deducting dues for employes in the smokeless powder division and turning those dues over to you each month?

A. I think so, yes.

Q. Do you have the financial statement of the union for August, 1941?

A. Yes sir.

Q. Does the financial report reflect certain amounts paid to individuals for obtaining members?

A. May I ask again just what month you said?

Q. August.

389 A. To August 1 or from August 1?

Q. From August 1 to September 1. Does the financial report for that month indicate such names?

A. Yes sir.

Q. Will you read to us the amounts that were paid to various individuals for the month of August?

A. Rudolph S. Hale, $3.60. Frank Pfeiffer, $23.75. Morris Medford, $30.25. Raymond Hutchins, $3.00. Earl Greeling, $29.50. Willie Holder, $10.25. Melvin Taylor, $50.05. Lois Franklin, $9.25. Edith Brenner, $8.00.

Q. What were these amounts paid for—I beg your pardon. Did you have some more there?

A. Yes.

Q. Read the rest of them, please?

A. James Carroll, $7.25; Leslie Britton, $3.25. Emil Lang, $3.25. Ed. Nolan, $4.25. Gilbert Clark, $10.25. Harry Frazer, $3.50.

Q. What were those payments for.

A. They were listed as miscellaneous expense incurred in obtaining memberships.

Q. What was the agreement with the individuals as to how much they would get for that work?

A. The Board knew—

Q. That is the Union board?

A. Yes, the Executive Board of the union knew
390 there would be quite a bit of expense in obtaining members, so they arrived at twentyfive cents each would be fair reimbursement.

Q. So these wage assignment statements and application cards were distributed to various persons, beginning August 1941, with the understanding that those returned, signed, they would get twentyfive cents for each such statement signed, is that correct?

A. That is correct.

Q. (By Trial Examiner Ruckel.) Your records then show Melvin Taylor obtained approximately two hundred new members?

A. Yes sir.

Q. Fifty some odd dollars?

A. Yes, for the month of August.

Q. 1941?

A. That is right.

Q. (By Mr. Evans.) Did that proposition continue up to the present time?

A. Yes sir.

Q. And your subsequent financial statements indicate similar amounts paid to those and other employees for later months?

A. Not near as much.

Q. August was the big month, is that it?

A. Yes sir.

Q. Did the representatives and committeemen like-
391 wise receive twentyfive cents commission for each new member?

A. The committeemen did; the representative did not.

Q. So in addition to the ones indicated in August 1941, for those you have read, there were additional ones which the representatives obtained?

A. Yes sir.

Q. (By Trial Examiner Ruckel.) What department does Melvin Taylor work in—Melvin or Melville, which is it?

A. M-e-l-v-i-n.

Q. What department did he work in in August 1941?

A. As far as I know it was in the metalic department.

Q. Metalic manufacturing?

A. Yes sir.

Q. (By Mr. Evans.) Was there any instructions given as to where the employes would solicit these new memberships and wage assignments?

A. I don't know what the other fellows did, but any that I instructed I told them not to do it on company time or property. They were instructed that way.

Q. You do not know whether they followed your instructions or not?

A. I couldn't say, no sir.

* * * * *

394 *Cross-Examination.*

Q. (By Mr. McRoberts.) Your union, the independent union, still has some members over in the Smokeless Powder Division who are now working for the East
395 Alton Manufacturing Company, does it not?

A. Yes sir.

Q. Just a few members still over there?

A. Yes sir.

Q. And it is their dues that have still been collected and their wage assignments which have not been canceled?

A. That is right.

Q. And their dues have been remitted to you during the last few months?

A. Yes sir.

Q. About how many of them are there?

A. Twentyfive or thirty.

Q. With respect to this booklet, Mr. Chapman, Exhibit number 14, I believe the representatives of the Company advised the representatives of the independent union sometime ago that they were going to put out some such a booklet as this?

A. Yes.

Q. And you suggested to them it would be helpful if they included in that booklet a copy of these contracts, is that correct?

A. May I answer it this way: That the union intended to make a booklet with all contracts and working agreements so each employe would have one that they could carry with them, and our methods of distributing had
396 been so bad, and when the Company suggested putting out a booklet, that they were going to put out a booklet stating from the founding of the Company, we asked would they insert the working agreement and the contract.

Q. And they inserted not only the working agreements, but grievance procedure and this basic agreement as well?

A. Yes sir.

Q. And you on several occasions—and by you I mean representatives of the union, on several occasions had meeting with the Company representatives and asked them when these booklets were going to come out?

A. Yes sir.
Q. You wanted them and you asked for them?
A. Yes.
Q. And they were eventually issued a short time ago, is that correct?
A. Yes sir.
Q. Within the last month or two?
A. Yes, within the last month or two.

* * * * *

400 Q. I believe you testified yesterday in June 1941 the Company did not demand to see any evidence as to the number of members which the union had?
A. I don't think they did.
Q. But I think you testified that you left the impression—the union representatives left the impression with the Company you did have a majority?
A. Yes sir.

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435 CHRIS MEISENHEIMER, called as a witness by and on behalf of the National Labor Relations Board:

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Direct Examination.

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436 Q. You work for the Western Catridge Company?
A. Yes, sir.
Q. What department do you work in?
A. Casting shop.
Q. About how long have you worked for the company?
A. I hired in in 1933.
Q. Do you hold any office or position with the Independent Union?
A. I am a representative of that department on our shift.
Q. How long have you been representative?
A. Since last spring, along in February, I think, the latter part of February, I think, I was appointed representative or elected representative.

Q. Elected by the group in the cast shop?
A. On our shift.
Q. What shift was that?
A. No. 1.

* * * * *

439 Q. Mr. Williams, Burdette Williams and Mr. William Elliott worked in the same department you did?
A. They worked in the same department I do or did.
Q. After their discharge did you discuss that matter with Mr. Day?
A. Yes. We held a meeting in the brass mill office and I told Mr. Day according to our working agreement that the Independent Union had, that they had no right to discharge them men without taking it up with the union representatives first.
Q. I show you Board's Exhibit No. 15 and ask you to state whether or not that is the agreement to which you refer, or a copy of it?
A. This is a copy of the agreement, and I based my argument on "When management wants to remove a man from the job they must show the union representative beyond a reasonable doubt the man has failed in one of the following—"
Q. That is Paragraph No. 9?
A. No. 9.
Q. Then it sets forth the A, B, C, D, and E provisions?
A. Provisions. And, I told Mr. Day that he should have taken that up with the representatives before he discharged them men.
Trial Examiner Ruckel: Before he discharged whom?
440 The Witness: Mr. Williams and Mr. Elliott.
Q. (By Mr. Evans.) What did Mr. Day say?
A. He said he realized that it was a mistake; that it would never happen again.

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449 PROCEEDINGS.

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480 WILLIAM ELLIOTT, called as a witness by and on behalf of the National Labor Relations Board:

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Direct Examination.

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Q. Did you work for the Western Cartridge Company at some time?

A. About 13 years, I guess.

Q. Beginning when and to when?

A. Well, the first time was in 1925, and I guess I worked a year and a half.

Then, later, about the latter part of 1927, I think I worked something like a year; probably a year and a half.

Then, the last time I worked from November of 1930 until July, 1941.

Q. In 1937 you were working at the plant?

A. Yes.

481 Q. Was there an effort by the C. I. O. to organize sometime during that year?

A. Well, there was. They were soliciting and passing out handbills along about that time.

Q. Did that begin before or after the beginning of the Independent Union?

A. Before.

Q. Did you sign a card for the union at that time?

A. I did.

Q. The C. I. O. union?

A. Yes, sir.

Q. And did you attend meetings of that union?

A. I attended several meetings.

Q. Thereafter did anybody solicit you to join the Independent?

A. Oh, yes.

Q. And who was that?

A. Gus Robinson was the first man that ever solicited me to join the Independent.

Q. Who was he?
A. He was an employee that worked in the casting shop.
Q. Did that take place in the shop?
A. It took place in the shop; yes.
Q. Anybody else solicit you?
A. Yes; Bill Keil.

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483 Q. Did you later sign a card for the Independent Union?
A. Oh, yes; later I did.

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Q. Had you ever become a department committeeman for the Independent Union?
A. Yes.
Q. About when did that occur?
484 A. I think it was last February, probably the last of last February, 1941; somewhere along about that time.

* * * * *

Q. Did you ever have any conversation with Mr.
485 Day about the Independent Union last spring?
A. Several times; several different occasions.
Q. When, approximately, was the first time?
A. Well, I would say it was probably in the latter part of February.
Q. Where did the conversation take place?
A. In the brass mill office; in his office.
Q. Anybody else present at the time?
A. I don't think so, no.
Q. What was said at that time?
A. About the Independent Union—well, Mr. Day at different times called me up to the office, his office, and asked me about different things, work and the union, and we discussed unions and the work and the kind of work and the qualifications and all of the men that worked there, and some way to better conditions.

And he talked to me about the Independent Union and he asked me—he told me—he said that he didn't see any reason why the Independent Union couldn't be made to work. He says, "Now, Bill, you are the only man back there can put the union inside or out."

Now he said, "It is up to you, and I am counting on you to help me."

Well now, I said, "Mr. Day," I said, "I never solicited any union of any kind." I said, "I would not ask a
486 man to join any union; I never have and I don't expect to. But," I said, "it is not up to me to help these men make their minds up." I said, "They don't especially like that union for different reasons. They have been told it is a company union."

* * * * *

Q. (By Mr. Evans.) Go ahead.

A. I told him that the employees had been told by different representatives of the union it was a company union, and I said, "I don't know whether it is or not, but I have been told it is."

And I said, "You can't expect me to go out there and try to sell that union to those fellows if they don't want it."

Well, he said, "You can do it. You are the only man out there that can do it."

Well, I said, "Maybe I am, but I can't do it. I won't do it," I said. "I don't want anything to do with it, no more than if there is anything I can do to help you out and these men out at the same time, I am perfectly willing to do it. But," I says, "when it comes to the question of putting the union over," I says, "you can count me out."

487 Q. You say this conversation took place the latter part of February, 1941?

A. The latter part of February.

Q. Was that shortly after you had become the committeeman for that department?

A. Committeeman.

Q. Later on did you sign for the A. F. of L.?

A. Yes; I did.

Q. About when was that?

A. I think that was sometime in July. I signed the card sometime in July; I am not sure.

Q. Did you resign from the Independent Union at any time?

A. Yes; I resigned from the Independent Union along the first of July.

Q. 1941?

A. 1941.

Q. And did you stop your wage assignment?

A. I stopped the wage assignment.

Trial Examiner Ruckel: How did you do that?

The Witness: I had to go over to the Independent Union office over here and sign a card authorizing them—the company, to stop the wage assignment.

* * * * *

488 Q. (By Mr. Evans.) After Gruner became the committeeman from that department, did he solicit employees there to join the Independent Union?

A. Yes, sir; most every day.

Q. Did he do so in the presence of foremen?

A. Yes. I happened to be standing right next to him, talking to the foreman, when he was talking to a new employee there, trying to get him to join the union.

Q. What was the name of the foreman?

A. Otis Cooper.

* * * * *

489 Q. Were you ever elected to any office in the A. F. of L. union?

A. Financial secretary.

Q. When did that occur?

A. The 23rd of July, 1941.

Q. What local was that for?

A. 333 International Molders and Foundry Workers Union.

Q. About that time did you have some discussion with some foreman about a shift change?

A. Yes; with Orville Carlton and Terry, Clyde Terry.

Q. What was Carlton's job?

A. I am not sure at the time, but I found out afterwards he was assistant superintendent out at the mill
490 at night; in the brass mill at night.

Q. What was Terry's job?

A. He was foreman in the casting shop on my shift.

Q. Tell us what this was about; what was said.

A. Well, it was about a change in shifts. They had a shift bulletin up on the board and they wanted to change for a new one, so they brought them up and hung them up on the bulletin board, and wanted all the men to look at it to see what they thought of it.

So, we all decided, that is, the majority, that they didn't

want anything to do with it; they didn't want the new bulletin, after we had been told that it lost us money.

Mr. McRoberts: What?

The Witness: That we would lose money.

Trial Examiner Ruckel: That you would lose money by reason of what?

The Witness: By reason of the change in the shift.

Trial Examiner Ruckel: When you say you didn't want the bulletin, you mean you didn't want the change that the bulletin notified you of?

The Witness: That is right.

Q. (By Mr. Evans.) Were you to sign this bulletin notice if you were in favor of it?

A. Yes, sir.

Q. Who told you that?

491 A. Terry.

Q. And did you sign it?

A. No; I didn't sign it.

Q. Anything else said between you and Terry at that time?

A. Oh, yes, we discussed it. I said, "Have you figured that new bulletin out, that new schedule out, that is on the bulletin board?"

He said, "No."

And I said, "Figure it out."

And he said, "Why?"

And I said, "I have been figuring it out, figuring out how many extra days work you have in a year, and see how much overtime you lose at the end of the year."

He figured it out. So, he and I went over on my furnace and figured it out, and he said, "Well, I didn't know that."

And I said, "I didn't know either until I figured it out."

So he said—well, he said, "I am supposed to go around and ask all you fellows to vote on it." He said, "You can vote on it if you want to or not, if you don't want to." And he said, "I have a list of names of the men on the shift, and they are supposed to vote yes or no."

So I said, "Well, that is a poor way to vote. It is supposed to be a change manipulated some way by the

492 Independent Union; anyway, they had something to do with the change, or schedule,—the Independent Union was supposed to have."

Trial Examiner Ruckel: You said that to him?

The Witness: No; he said that to me.

Well, I said, "If they wanted them to vote on it, why not let them vote in the proper manner?" I said, "That is the kind of vote Hitler gave the Czechs when he took the country over."

Well, he said he didn't think very much of it himself, but if they want to have the men vote, why not give them the privilege and let them vote on it. And I said, yes, that is the way I thought about it too.

So, we had quite a lot of discussion, and several other fellows joined in it. They was not very much impressed with the goodness of the changeover.

Q. (By Mr. Evans.) Did you later have a conversation with Carlton then?

A. Yes. Terry, I suppose, told Carlton. So he said, "Bill, what have you got against that change in the schedule?"

I said, "There is lots of things against it." I said, "In the first place, we lose money on it; in the second place, we haven't enough time between changes of the shifts." I
493 said, "You have no time at all between the two shifts."

Well, he said, "If you made up your mind, there is no use for me to try to sell you this," he said, "but the fact is, we want to get all the men working together on the same shift." He said, "You know there is a lot of men out of town that work here now." He said, "Some of the men have bought new cars on the strength of other employees riding with them to help pay for them."

I said, "If a man would buy a new car on the strength of somebody else helping him pay for it, he must be silly." I said, "I am not obligated to do anything like that," I said. I said, "Are you obligated to pay for somebody else's automobile?"

And he said, "No."

Q. Did you have any further conversation with Mr. Carlton about that?

A. I said, "Have you figured out how much money we lose at the end of the year?"

And he said, "No."

And I said, "Figure it out."

He would not discuss the loss to the employees about

that. He didn't say much more that night, but he came up the next night and he said, "Hello, Bill, how are you?"

And I said, "O. K. How are you?"

He said, "I am mad as hell."

494 I said, "What about?"

He said, "You told the men up here that I said that the new schedule was losing money."

I said, "Now, I am not sure that I said that, but," I said, "you don't deny it, do you?" I said, "After all, it is true, isn't it?"

Well, he didn't say whether it was or not. But, he says that he didn't like to have me tell the men.

Well, I said, "I am not sure that I told them that you said that."

"It is something or other," he says, "something else."

And I says, "Maybe I did tell them. Even if I did," I said, "what of it?"

And he said nothing.

I said, "Let us forget about it."

And he said, "It is not worth arguing about."

Trial Examiner Ruckel: When was that conversation?

The Witness: That was around about the 22nd or 23rd —I think it was on the 22nd and 23rd of July.

Trial Examiner Ruckel: Was it before or after you were elected financial secretary of 333?

The Witness: It was after.

Trial Examiner Ruckel: Well, I thought you testified that you were elected financial secretary on the 23rd of July.

495 A. That was about the night I was elected. The first conversation I think over there was on the night that I was elected financial secretary.

Trial Examiner Ruckel: And the second conversation was the morning after you were elected?

The Witness: Not after. We were working the midnight shift then. The first conversation was one day before and the second on the same day as the election of the union; I am not sure, but it was around there somewhere.

Q. (By Mr. Evans.) Do you know Herschel McCauley?

A. Yes.

Q. What is his job with the company?

A. Well, he has been with the company a good many years. His job last year, I think, was—the first of last year he was assistant superintendent in the brass mill, or he held that position.

Q. In July, 1941, was he still in that position?

A. No; I think he was transferred out to the employment department, employment office.

Q. Did you have any conversation with him about the Independent Union?

A. Oh, several times.

Q. Did you have one in July?

A. I am not sure I had a conversation with him then, but he was in the employment office in July—

496 Q. When did you have the conversation with him about the Independent?

A. Well, when we were negotiating the contract for the cast shop, he was P. W. Day's assistant, he was holding that capacity at that time, and I had several conversations with him then, personal conversations along in, I would say, February or March; probably up until April.

Q. Did he at one time ask you to solicit men to join the Independent?

A. More than one time he asked me. He asked me more than one time why I didn't get behind the Independent Union to try to make something out if it.

Q. And what did you tell him?

A. I said, "Herschel, Chapman told me—" he is the president of that union— "that it was a company union; it was formed by the company, for the company's own benefit." And I said, "He told the men that at a meeting one night." I said, "Do you expect me to go out there and ask those men to join that union?" I said, "Just between you and I, is it a company union?"

And he said, "Off the record, it is."

* * * * *

Q. (By Mr. Evans.) Well, what happened about your job in July?

497 A. I was fired.

Q. Who fired you?

A. P. W. Day.

Q. What day was that?

A. The 25th.

Q. Did you have a conversation with him?

A. Oh, yes. I had a lengthy conversation with Mr. Day at the time I was fired.

498 Q. (By Trial Examiner Ruckel.) July 25th, you say you were discharged?

A. The 25th, yes.

Q. (By Mr. Evans.) July 25th?

A. Yes, sir.

Q. Was anybody else present at the time?

A. Not at the beginning of the conversation, but at the finish of the conversation he nodded his head for Bernard, and he is personnel man in the brass mill; he nodded his head for him to come over, and he came over and took a seat.

Q. What was said before Bernard came over?

A. Mr. Day called me in, and I was off that day, and my wife told me Mr. Day wanted to see me; so I went down to his office and sat down, and he said "Sit down" and I said "All right", and he had a kind of belligerent manner, and he said "I called you in to tell you you haven't a job here any more", and I said "That is funny, what is it all about?" and he said "You stuck me in the back, and let me down", and I said "I stuck you in the back and let you down? What do you mean? He didn't exactly explain himself, but he went ahead to tell me—the conversation led up to the fact I had let him down on the independent union, and I said "No, I didn't let you down", and I said "I made a bargain about it one day with

499 you, and I have kept it, and I never let you down, and the Company let you down". I said "I went out and sold you to the men that worked in the casting shop", and I said "You told me what you could do, what you would do, that they would get a square deal", he said he knew they had never had a square deal before, but as long as he was superintendent out there he would see they had a square deal. I said "Now, when you find out you cannot give the men a square deal you want to tell me I have laid down on you" and I said "I have done everything I could to help you in every way I could, and now all I get for it is getting fired".

Q. You say Mr. Bernard was called over?

A. He was called over. After that we got into a conversation about back pay.

Q. What was that?

A. We had a conversation about the bonus, and we used to work under a bonus system, about the money that the Company beat the men out of under the bonus system, and I had that conversation with Mr. Day before.

Q. How long ago was that?

A. The discussion about—

Q. About the bonus? Was that back of 1938?

A. 1938, I think they started to quit paying the bonus along the early part of 1939, I am not sure.

500 Q. You and Mr. Day had a discussion about the bonus?

A. We had a discussion about the bonus. He wanted to know what was the matter with the men out there, at different times, and I told him the biggest majority of the men that worked out there talked about it and they all know how much money they were beat out of under the bonus system, and that kind of rankled them, and I said "You know it was a bonus you promised to pay some hourly men and the other men that were put on the bonus, and it is different, and they make more metal now than we did at any time they were working under the bonus system."

Q. Was Bernard present in this conversation?

A. Not right there until the very last.

Q. Go ahead.

A. I told him they made a lot less money for the amount of work they did, and I said "That is one thing that is the matter with the men", and I said "You know all that money"—some of the men kept track of the money the company beat us out of on the bonus, and it ran into four figures, and I said "That is what makes some of the men mad out there." He said "We don't owe you anything", and I said "Yes, you do. You remember a couple of months ago when you and I were discussing the matter you called me up here to find out what was the matter with the men in the casting shop, and why they were dis-

501 satisfied, and we discussed that before, and I gave you a figure of how much they beat me out of and you

said to me the Company still had the records of how much money they beat us out of on the bonus system", and I said "You know they owe that money" and he said "Bill, if you think you have a just claim against the Company I will call a conference with the management and we will try to get this thing straightened out", and I said "No, I am not that smart, Mr. Day." At the present time I was kind of upset, and I said "When I have a conference with the management I would like to have a lawyer around to kind of defend me", and he said "All right", and that was about the time he called Bernard over; so the conversation didn't last much longer, and he just went ahead and said "Bill, I am sorry I have to do this, it is not my idea", and he said "I would rather fire any man that works for me than I would you", and I said "Why" and he said "For different reasons." I said "I think I know the reason", I told him what the reason was, I said "Because I was always a little more honest with you than anyone you could find" and he said "That and a few other things; I could always depend on you to tell me the truth" but he said "I have orders to fire you, and you don't expect me to lose my job over not firing you, do you?" and I said "No, I don't expect you to lose your job over not firing me" and I said "I think I know what you are up
502 against just as well as you do", and he said "Well, you understand the situation", and I said "Yes, perfectly", and he said "I wish you a lot of luck" and he said "Be careful and take care of yourself."

Q. Did you have any conversation then with anybody else?

A. Yes, after I left the office I went out to see Mr. Haddelton.

Q. The personnel manager?

A. Yes, Mr. Day told me I could stop and see Mr. Haddelton, and I went to see him.

Q. Did you see him?

A. Yes.

Q. Was anybody else present at that time?

A. No, he was by myself.

Q. What was said at that time?

A. I just told him who I was, and I just got fired, and

what I thought it all amounted to, and he said "I am sorry, there is not a thing I can do. I don't know, what seems to be going on, to tell me this, and during the last war everybody was crazy", and he said "The same thing this time, everybody acts crazy to me", and I said "All right" and he said "There is nothing I can do" and I said "Thank you."

Q. Did you go to see anybody else?

A. Mr. Schotters, the general plant superintendent.

503 Q. Did you see him?

A. Yes.

Q. Where?

A. In the main office, in the lobby.

Q. Was anyone else there at that time?

A. There was no one in the conversation. There were several in the building, but not in the conversation.

Q. What was said at that time?

A. I went in ano I said "I am Bill Elliott; I did have a job out in the casting shop, but I just got fired" and he said "Oh, yes, this man Olds called me about you about five minutes ago", and I said "What has he got to do with firing me?" and he said "I don't know, you will have to find out". I said "Oh, you are firing me for union activities" and he said "I didn't know you belonged to the union", and I said "That is funny, you just got through telling me that Olds called you up about me and he is the union organizer", and he said "I am not firing you for that", and I said "What are you firing me for?" and he said "For making insinuating remarks about the management" and I asked him what kind of remarks I had made, and he said "About the Company beating you out of money", and I said "Well, didn't they?" and he said "The Company doesn't owe you a damned cent" and I said "Oh, yes, they do" and he said they didn't do business that

504 way, and I said "May be they don't, but they did"; and he said "I am new here, I have only been here since January" and I explained to him the bonus system we worked under for several years, and he said "I am new here, and I don't know anything about it, and I would have to look it up" and I said "You are new, and still

you say the Company doesn't owe me a damned cent?" and he said "I would have to go into that."

Q. Was anything else said?

A. He told me that no one—that he was not firing me for union activities, but he said "Anyone that has any remarks to make about the management will be fired", and I said "What are you going to do, fire everybody that works for you", and he said "No" and I said "You say that is the reason for firing me, I have heard several people making remarks about the management" and I said "I have been here a long time, and I know several people, and I don't know any yet that didn't have some remark to make about the management" and he said "Who were they?" and I said "I didn't say" and I said "I heard some monthly salaried men make remarks about the management", and he said "Who were they?" and I said "I didn't say", and he said "Anybody who makes remarks about the management will be fired", and I said "You had better fire all of them then" and I said "I have heard people make remarks about the management

505 I wouldn't begin to think of."

Q. Have you ever been called back to work since that time?

A. No, I never have.

Mr. Evans: That is all.

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518 Q. I think you said you had several conversations with Mr. Day?

A. I did; I had several conversations with him.

Q. In which the independent union was discussed?

A. We discussed working conditions, and the work, and the metal, independent union, and various other subjects.

519 Q. How many discussions did you have with him in which the independent union was discussed?

A. Practically every one I had with him we got around to discussing the independent union.

Q. Over what period of time?

A. I would say a period of two months, may be once or twice a week.

Q. What was the substance of those conversations with him?

A. He told me different times about the union.

Q. About the independent?

A. About the independent, and he said that he didn't see any reason why the independent union couldn't do good work, and I said it could if it had proper representation, and I said if it was just something like the Standard Oil we could, and we talked about the Standard Oil union and I told him we couldn't get that because it is a Federal union, or at least it was, of petroleum workers, and we couldn't get anything like that, and I said that it might be made to work if it was started and rebuilt from the ground up on different lines, and he said he didn't see any reason why it couldn't be done that way, and he said "Why don't you get behind it and try to do something with it?" and I said "I am not much of an organizer myself."

Q. What date was it you testified you joined the A. F. of L.?

A. I think it was the 23rd of July, 1941.

520 Q. (By Mr. McRoberts.) Is that the date you joined or were elected to office?

Q. (By Trial Examiner Ruckel.) You testified you were elected to office the 25th of July?

A. Elected to office. It was somewhere near the 5th or 6th when I really joined the organization.

Q. Of July?

A. Yes. What I mean by joining is signing up with the A. F. of L.

Q. When did you resign from the independent?

A. Somewhere around the first of July.

Q. That is, the time you resigned as an officer of the independent?

A. I never was elected an officer of the independent and I kind of checked up the men who worked on my shift in the casting shop.

Q. As representative?

A. Representative.

Q. About when was it that you resigned from the independent, you say?

A. It was around the first of July.

Q. It was before you joined the A. F. of L.?

A. It was before or about that time; it was close to that time.

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522 Q. (By Mr. McRoberts.) Mr. Elliott, in these conversations with Mr. Day were you presenting various grievances that you or the other men in the shop had?

A. No, it was more—Mr. Day would call me to his office and ask me about different things and changes, and he was new on that job, and he would call me out there and ask my advice about different changes in the casting shop, and I would make recommendations to him for the changes, and he did follow some of them.

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523 Q. (By Trial Examiner Ruckel.) After you were told you were discharged, and before you saw Mr. Schotters, did you speak to Mr. Olds to tell him you had been discharged?

A. No, I didn't have any opportunity. I left Mr. Day's office and immediately went to Mr. Haddelton, and from Mr. Haddelton's office I went down to the main office, to see Mr. Schotters.

Q. How soon after you were told you were discharged was it Mr. Schotters told you Mr. Olds had called up?

A. I would say thirty minutes, because I sat and talked probably thirty minutes, or longer, after he told me I was discharged, and I said "It is strange all of a sudden you make up your mind to fire me, Mr. Day" and I mentioned about joining the union, and he said "I didn't know you joined the union" and I said "That is funny, Mr. Anders—" he is Mr. Day's assistant in the cast shop—he said he named practically all the officers of it that had been elected the night before.

Q. Who did?

A. Charles Anders.

524 Q. He is Mr. Day's assistant?

A. He is Mr. Day's assistant.

Q. To whom did he name them?

A. To some of the fellows who were talking.

Q. To whom did he name them? Did you have a talk with Mr. Anders?

A. There were two other fellows he was talking to, and I was taking the conversation in, and I was standing close to him.

Q. What did Mr. Anders say?

A. He said "How about you?" and I made some slight remark about it, and I don't know exactly, but it was some joking remark to him "I am the guy that handles the money" or something like that.

Q. What was the date of that conversation?

A. I would say that was on the morning of the 23rd. We worked the graveyard shift and it was on the morning of the 23rd.

Q. You were elected on the 23rd?

A. I was elected on the 23rd, and it was the next morning; we worked the graveyard shift that night after the election.

Q. What further did Mr. Anders say, if anything?

A. I don't just remember now, he had some few things to say, and I laughed about it, and I went on away.

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525 Q. (By Mr. McRoberts.) You say he was joking about the matter?

A. In a joking manner he said "What were you elected to?" and I said "I am the fellow that gets all the money" and he said "There is nothing like having all the money" or something like that.

Q. Who were the other two men he was talking to, do you remember that?

A. Homer Terry and someone else, and I am not sure who else, and I just came out of the bathroom and I was coming in to work, and he works all day, and that is where the conversation took place, right outside of the bathroom door.

Q. (By Trial Examiner Ruckel.) Who started the conversation, you or he or somebody else?

A. He did; he started the conversation.

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559 RAYMOND CLARK, a witness called by and on behalf of the National Labor Relations Board:

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Direct Examination.

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Q. You work for the Western Cartridge Company?
A. Yes sir.
Q. About when did you start to work there?
A. September 21, 1940.

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575 Q. Did you go to the plant sometime after that?
A. I was notified Mr. Schotters wanted to have a talk with me a couple or three weeks after that, and I called him up, and he told me to come to his office at one o'clock in the evening.
Q. One o'clock in the evening?
A. Yes, after lunch. So I went down there at one o'clock.
Q. Was anyone else there?
A. No, sir, and we sat down on the bench in the hall, and he said to me "Clark, why did you turn your case over to the Labor Board over at St. Louis?" and I told him the reason, and he said "You should have brought your troubles to me before taking them to the Labor Board, or telling Miss DeSchweinitz about it, you see she
576 takes everything to heart, and it caused me a lot of trouble going back and forth" and he said "Between you and me the union is horseshit, but I will be better to you than you were to me, and I will put you back to work" and I said "O.K." and he said "When does your shift go back on?" and I said "They go back Saturday night at midnight", and that was Thursday, and he said "I will get in touch with Mr. Day and have him call you, and you come back to work" and Miss De Schweinitz told me Mr. Schotters told her the same thing, I was going to work Saturday night at midnight, or I thought I was, so when Friday came I wasn't notified, so I called up Mr. Schotters; so he had me come into the office again.

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595 HOMER TERRY, called as a witness by and on behalf of the National Labor Relations Board:

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Direct Examination.

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Q. You work for the Western Cartridge Company?
A. Yes, sir.
Q. What department?
A. Casting shop.
Q. About how long have you worked for the company?
A. Since July 20, 1933.
Q. Are you an officer in the Molders Union?
A. Yes, sir.
Q. What office do you hold?
596 A. President.
Q. Were you working for the company in 1937?
A. Yes, sir.
Q. Was there any effort of the C. I. O. to organize at that time?
A. There was.
Q. Did you take part in any way in that organization?
A. I did.
Q. Thereafter, in 1937, did anybody ask you to join the Independent?
A. Yes, sir.
Q. Did you sign for the Independent?
A. I did.
Q. Where did you sign?
A. In the casting shop.

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598 Q. When was it you were elteted president of the Molders Union?
A. It was in July.
Q. Do you know what date?
A. No; I don't.
Q. Was that about the 23rd?
A. Somewhere around that time.
Trial Examiner Ruckel: 1941?
The Witness: Yes, sir.

Q. (By Mr. Evans.) This is Local No. 333 of the International Foundry and Molders Union?

A. Yes, sir.

Q. Did you go to work that night after the meeting?

A. Yes, sir.

Q. About what time?

A. Well, it was somewhere around 11 o'clock.

599 Q. Did you have any discussion with any of the foremen about that?

A. The next morning.

Q. What time?

A. It was somewhere around 7 or 8 o'clock.

Q. Who else was present?

A. Gale Groessman and Charlie Andrews.

Q. And Andrews was the assistant superintendent?

A. Well, I don't know. He is some kind of a foreman.

Q. What was Groessman's job?

A. He was foreman also, in the scrap department.

Q. What was said at that time?

A. Groessman said that he understood that I was elected vice-president and Andrews said that he understood I was elected president.

Q. Anything else said?

A. Oh, there was a little kidding going on about that, that was all. I told them I was.

Q. Was what?

A. Elected president.

Q. Who did Groessman say he thought was elected president?

A. Burdette Williams, I believe.

Q. Were the names of the other officers mentioned?

A. Yes.

Q. Who?

600 A. Bill Elliott and Arthur Williamson; I think Hubert Morning was mentioned and Bo Williams, Burdette Williams. We call him "Bo" for short.

Q. Do you know a Mr. Keil; William Keil?

A. Yes, sir.

Q. What is his job with the company?

A. He is a foreman.

Q. In what department?

A. Casting shop.

Q. Did you ever have a conversation with him about unions?

A. Yes, sir.

Q. About when?

A. Well, it was sometime in August, I think.

Q. Where?

A. Up in the casting shop.

Trial Examiner Ruckel: August, 1941?

The Witness: Yes, sir.

Q. (By Mr. Evans.) Who else was present?

A. Nobody.

Q. What was said at that time?

A. He asked me why I though the American Federation of Labor could do more for me than the Independent Union.

Q. What else was said?

A. Well, I told him that I thought they could.

He wanted to know why. He asked if the company
601 hadn't been pretty good to me.

And, I says, "Yes, they have." And I says, "They are a little off on their seniority, but I think that could be remedied some."

Q. Anything else?

A. I don't exactly know. We talked quite a little bit about that there. We had quite a conversation.

Q. That was the substance of it?

A. Yes.

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634 ELLIS McPHERSON, called as a witness by and on behalf of the National Labor Relations Board.

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Direct Examination.

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Q. You work for the Western Cartridge Company?

A. East Alton Manufacturing Company.

Q. You work in the smokeless powder division?

A. Right.

Q. How long have you worked in the plant?
A. Six years and nine months.
Q. You are still working there now?
A. Yes, sir.
Q. Anybody ever solicit you to join the Independent Union?
635 A. They did.

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Q. Where did he solicit you?
A. In the Hardening house, out at work.
Q. During working hours?
A. Yes, sir.
Q. Did you sign at that time?
A. I did.
Q. Did he ask you to sign a wage assignment?
A. He did.
Q. Did you sign one?
A. I did not.
Q. Did he or anybody else ask you at a later date to sign a wage assignment?
A. He did himself?
Q. How many times?
A. Oh, I would say three different times.
Q. During working hours?
A. Yes, sir.

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636 Q. (By Mr. Evans.) Did you ever join the Chemical Workers Union; the A. F. of L. Union?
A. Yes; I did.
Q. About when did you join that?
A. In February of 1941.
Q. Did you wear your union button around the shop?
A. I did.
Q. And when did you do that? When did you begin doing that?
A. In April, I believe it was, the first button we got.
Q. April, 1941?
637 A. Yes.
Q. Do you know an Arthur Arnold?
A. I do.
Q. Does he work in the smokeless powder division?

A. Yes, sir.

Q. What job does he have?

A. He has—

Q. Or, what job did he have in April of 1941?

A. Well, he was a foreman at that time, but I really don't know whether he was a salaried foreman at that time or not, the first part. Towards the last part he was salaried. He was really my foreman.

Q. Did you have any discussion with him about your membership in the union?

A. I did.

Q. I mean, the A. F. of L. union?

A. Yes, sir.

Q. About when did that conversation take place?

A. I believe it was on the 25th of April. I got the date and all down, if you care for me to look.

Q. It is your memory that that is the date?

A. I believe that is the date.

Q. Where did the conversation take place?

A. Right after I went to work, right at the hardening building—right outside of the hardening building, on 638 the Mini Max line.

Q. Anybody else present at the time?

A. No, sir, they was not.

Q. What was said at that time?

A. He asked me about withdrawing from the union. He said that Mr. Smith, Albert Smith, didn't belong, and that Vonnahmen had withdrawed, and that Pitchford was undecided. They was more hourly paid foremen at the time.

Q. You were an hourly paid foreman at the time?

A. Yes, sir.

Q. Anything else said at that time?

A. Well, he asked me about withdrawing.

And, I told him—I said—well, do you want me to tell what we said at the conversation?

Q. Yes.

A. Well, I said, "I don't want to be contrary about it," but I said, "I hadn't thought much about it."

And he said—well, he said, "You know, these fellows

are not—the company don't like for the Independent—or, for the foremen to belong to the union."

Then I said, "I don't want to be contrary," but I said, "You haven't promised me anything if I withdraw." And I said, "If the union comes, I will probably have to belong."

And he said, "If you withdraw, you probably can't get back in."

639 And I said, "Until something else is done, I won't withdraw. I will just stay where I am."

Q. Do you know Mr. Monical?

A. I do.

Q. What was his job about that time?

A. He was supervisor over our shift. There was four different shifts—there is still four shifts out there, and he was our supervisor.

Q. Did you ever have any conversation with him about the union; the A. F. of L. union?

A. Yes; I did.

Q. About when was that?

A. Two days later. That was Friday evening, Mr. Arnold and myself. That was on Sunday evening, two days later.

Q. Where did that conversation take place?

A. Right outside of the hardening house, right at the rolls. The rolls are in the same building that the hardening is.

Q. Anybody else present at that time?

A. No, sir.

Q. What was said?

A. He asked me which I thought could do the most for me, the company or the union.

Well, I told him, "I am not in a position to say right now," but I will tell you just exactly what I told Mr. Arnold, "I will stay where I am until they offer me

640 something, or there is something else doing."

Q. Thereafter did they change your job or any part of your job?

A. He did.

Q. How soon after?

A. Well, I judge it was two months after that time before they had taken me off of that job.

Q. You are not just a production worker?

A. Just a moment. It was later than two months. It was longer than that; probably four months.

Q. You are not just a production worker?

A. Yes; I am.

Q. Did you ever have any conversation with Mr. Wortz?

A. I did.

Q. About when was that?

A. That was in May, the first one. I had different conversations with him.

Q. Where was the conversation?

A. In Mr. Wortz' office.

Q. What was said at that time?

A. He sent for me to come in, and I went in his office and he told me that all of the men was mad at me, and some of them didn't want to work with me.

And he asked what I thought he ought to do with a man like that.

641 Q. This was still while you were an hourly foreman?

A. Yes; it was.

So I told him—I says, "I didn't know that anyone was made at me," and he knew what he could do with me.

So then he begin on me. I had the A. F. of L. button on. He said, "I can't tell you not to belong," and he pointed at the button, and I can't tell you how to vote."

And he told me about the Labor Board had granted a hearing for the A. F. of L., and it was just a few days before that hearing.

And he told me that the job I was on also paid more than I was getting, and if I would go along with him and the company, he would get me a raise right away, and then later on he would get me up to the top of the bracket, and also during the summer we would get beer and get out and have a party and have a good time.

* * * * *

643 *Cross-Examination.*

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645 Q. Mr. Wortz, you say, pointed to this button in this conversation before the election and said, "I 646 can't tell you which way to vote."

A. That is right, "I can't tell you not to belong, or how to vote."

* * * * *

648 CHARLES WOMACK, a witness, called by and on behalf of the National Labor Relations Board:

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Direct Examination.

* * * * *

Q. Do you work in the smokeless powder division?
A. I do.
Q. About how long have you worked in the plant?
A. Since about April 4, 1934.
Q. What is your job?
A. Truck driver.
Q. Did you ever join the A. F. of L. union?
A. I did.
Q. About when?
A. About February.
Q. Of this year?
A. Yes, sir.
Q. (By Trial Examiner Ruckel.) What union was that?
A. The A. F. of L.
Q. The Chemical Workers Union or some other?
A. Yes, sir, the Chemical Workers.

Q. (By Mr. Evans.) Was a man named Pivoda 649 your boss at any time?

A. Yes, sir. He is my boss now.
Q. He is your boss now?
A. Yes.
Q. How long has he been your boss?
A. I think he took over about the middle part of April of this year.

Q. Did you ever have any conversation with him about the union?

A. I did.

Q. About when?

A. It was just a few days after he started taking the trucks over.

Q. Where did the conversation take place?

A. In front of Fred Olsen's office in the Smokeless Powder.

Q. Was anyone else present at the time?

A. No.

Q. What did he say?

A. He told me I had better lay low on union talk, they had spotters in the plant; and he went on to tell me he has two brothers who belonged to the union and he thought one had made a horse's ass out of himself, and the other he thought he had bettered himself a little bit, but he hadn't made up his mind.

Q. Were you wearing a union button at the time?

650 A. I was.

* * * * *

657 ELDEN WEISHAUPT, a witness, called by and on behalf of the National Labor Relations Board:

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Direct Examination.

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658 Q. You work for the Western Cartridge Company?

A. For the East Alton Manufacturing Company.

Q. You work in the Smokeless Powder Division?

A. Yes, sir.

Q. How long have you worked in the plant?

A. February 22, 1941.

Q. Did you ever sign a card for the Chemical Workers, A. F. of L.?

A. Yes.

Q. About when?

A. About a week later.

Q. After you were hired?

A. After I was hired.
Q. Did you wear a button around in the shop?
A. Yes, sir.
Q. And that was an A. F. of L. button?
A. That is right.
Q. About when did you start wearing that?
A. As soon as the A. F. of L. first came out with a button, and for some days they didn't have them, and right after they got them I wore it.
Q. Do you know Mr. Shindle?
A. Yes, sir.
Q. What is his position with the Company?
659 A. He is shift supervisor.
Q. Was he your boss?
A. Yes.
Q. Did you have any conversation with him about the union?
A. Yes.
Q. About when?
A. It was shortly after I was hired in and there was a lot of talk about union.
Q. About the A F of L union?
A. That is right.

* * * * *

748 OTIS YATES, a witness called by and on behalf of the Respondent:

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Direct Examination.

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Q. Where are you employed?
A. Western Catrdige Company.
Q. What is your position there?
A. Carpenter foreman.
Q. How long have you been with the Company?
A. Nine years this June.
Q. How long have you been a carpenter foreman?
A. Assistant foreman five years, and carpenter foreman about two years.

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762 *Cross-Examination.*

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763 Mr. McRoberts: The date is June 4th, and there is no contract with referenec to seniority prior to that date.

Trial Examiner Ruckel: I think the record is clear. The question is have you paid any attention to the contract since that time. Is that the question?

Mr. Evans: That is right.

A. What contract do you have reference to?

Q. The contract between the Company and the independent union.

A. No, we haven't.

Q. In other words, you have followed the same system you have always used?

A. Yes sir.

* * * * *

861 ARTHUR ARNOLD, a witness, called by and on behalf of the Respondent:

* * * * *

Direct Examination.

* * * * *

Q. Where are you employed?

A. Western Cartridge Company.

Q. How long have you been with that Company, Mr. Arnold?

A. Almost eleven years.

Q. What is your position?

862 A. At the present time I am supervisor.

Q. Supervisor in what department?

A. The 4,000 minamax smokeless powder line.

Q. At the moment that is the East Alton Manufacturing Company?

A. Yes sir.

Q. How long have you been supervisor of that particular line?

A. Since last March.

Q. Since March of 1941?

A. Yes sir.

Q. Before that time what was your position with the Company?

A. Since September 1940 I have been foreman in the four thousand minamax line.

Q. The same line?

A. Yes sir.

Q. Before that what was your position?

A. I was ranking control chemist in the laboratory.

* * * * *

954 THOMAS L. WORTZ, a witness called by and on behalf of the Respondent:

* * * * *

Direct Examination.

* * * * *

Q. What is your occupation?

A. Superintendent of the East Alton Manufacturing Company, a subsidiary of the Western Cartridgt Company.

Q. You have been with that Company since July 1941?

A. Yes. I have been there since February 7, 1941.

Q. Between February 7, 1941, and July 7, 1941, you have been with the Western Cartridge Company, is that correct?

A. Yes sir.

Q. Did you then have the position of superintendent of the smokeless powder division of the Western Cartridge Company?

A. No, not until March 1941. Prior to that I had
955 no title whatever.

Q. Mr. Wortz, you were first employed by the Company in any capacity in March 1941?

A. That is right.

* * * * *

990 ALBERT R. KRINARD, a witness called by and on behalf of the Respondent:

* * * * *

Direct Examination.

* * * * *

Q. Where are you employed?

A. Western Cartridge Company.

Q. How long have you been with them?

A. Twenty-six years next Wednesday.

Q. What is your position with the Company at the present time?

A. At the present time personnel work in the brass division.

Q. How long have you been holding that position?

A. I returned to that job on June 4th of this year, 1941.

Q. June 4th, 1941?

A. Yes, sir.

Q. You say you returned to it?

* * * * *

996 *Cross-Examination.*

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999 Q. What rights would Clark lose by signing the quit slip, if he returned to work?

A. What rights would he lose?

Q. Yes.

A. Mr. Day told him he could go back in there and go to work. I don't know of any rights that he could lose.

Q. Any seniority rights or anything like that?

A. No, we have no set up rules on seniority rights.

Q. There was no agreement in effect concerning the brass mill?

A. No, nothing at all in the rolling mill.

Q. You did not know about the agreement between the superintendent and the independent union dated March 14, 1941, covering the brass mill?

A. There is nothing that gives seniority preference that I know of.

Q. Have you ever seen such an agreement?

A. Yes, there was one made out. That was before I ever went back in the mill there, but I have read the thing over.

* * * * *

Q. Just what agreement do you have reference to that you said you read over?

A. The one I suppose was gotten up between Mr.
1000 Day and the boys at the head of the independent union.

Q. Weren't you furnished with a copy of that when you came out to the brass mill?

A. No, nothing was said directly about that right then at all.

Q. Did you go over the working agreement with the independent union—the one that was signed on June 4, 1941?

A. No, I didn't go over that with the independent union. I wasn't involved in that at all. I got a copy of it.

Q. You do not know then what rights, if any, Clark would lose by reason of his signing the quit slip?

A. No, I don't see where he would lose any rights of any kind to go back there and go to work.

* * * * *

1006 ORLAN S. HAMILTON, a witness, called by and on behalf of the Respondent:

* * * * *

Direct Examination.

* * * * *

Q. Where are you employed?

A. Western Cartridge Company.

Q. How long have you been with the Company?

A. Four and a half years.

Q. What is your position?

A. Employment manager.

* * * * *

1013 *Cross-Examination.*

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1016 Q. (By Mr. Evans.) Would the signing of the quit slip have any effect upon Clark's rights as an employe?

A. Not that I know of.

Q. Are you familiar with the terms of the contract between—

A. No, I am not familiar with that. It is not pertaining to my department and I am not familiar with its terms.

Q. You are the employment man?

A. Yes, sir.

Q. You have nothing to do with employes once they are employed, is that correct?

1017 A. That is right.

* * * * *

1103 *Cross-Examination.*

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1142 Q. He would also lose his seniority?

A. No.

Q. Who would reinstate his seniority?

A. Seniority for the length of time he had been away would not have affected him one way or another.

Q. Did you check the provisions of the contract to determine how that would affect his status?

A. He was a comparatively new employe.

Q. Just answer the question: Did you or did you?

1143 A. No.

* * * * *

1151 Q. Was Mr. Burdette Williams discharged solely for the fact he was low man in production for the months of May, June and July?

* * * * *

A. That was the principal reason, but also on account of his defiant attitude toward the management force or supervisory force and inability of management or supervisory force to get him to do what he was supposed to do. If we permitted Williams to become insubordinate and be

insubordinate at all times, we might as well let the rest of the shop do the same thing.

* * * * *

1152 Mr. McRoberts: I think that is all.

Trial Examiner Ruckel: Any re-cross-examination?

Mr. Evans: Yes.

Recross Examination.

* * * * *

1171 CHARLES ANDRUS, a witness called by and on behalf of the Respondent:

* * * * *

Direct Examination.

* * * * *

1172 Q. Where are you employed?

A. Western Cartridge Company.

Q. How long have you been with that Company, Mr. Andrus?

A. I started to work the 18th of April 1916.

Q. Have you been with that Company ever since?

A. Yes, sir.

Q. What is your position with the Company, Mr. Andrus?

A. Foreman.

Q. In What department?

A. Casting shop.

Q. How long have you been a foreman in the casting shop, Mr. Andrus?

A. Ever since I have been here.

* * * * *

1233 EARL JONES, a witness, called by and on behalf of the Respondent:

* * * * *

Direct Examination.

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Q. Where are you employed, Mr. Jones?
A. Western Cartridge Company.
Q. How long have you been with the Company?
A. A little over fifteen years.
1234 Q. What is your position with the Company, Mr. Jones?
A. Shift foreman now.
Q. In what department?
A. Casting.
Q. How long have you been a shift foreman there?
A. Seven years.

* * * * *

1256 Q. Mr. Jones, did you have William Elliott working under your supervision in 1941?
A. Yes, sir.

* * * * *

1352 GALE GOESSMAN, a witness called by and on behalf of the Respondent:

* * * * *

1353 *Direct Examination.*

* * * * *

Q. Where are you employed?
A. Western Cartridge Company.
Q. How long have you been with the Company?
A. Ever since September 1925.
Q. What is your position with the Company?
A. Assistant superintendent in the casting and scrap department.
Q. How long have you held that position?
A. I had charge of the scrap department until somewhere around six months ago, when Mr. Gerding was put

on as superintendent and I went on as his assistant in both departments.

* * * * *

1394 CLYDE TERRY, a witness, called by and on behalf of the Respondent:

* * * * *

Q. Where are you employed?
A. Western Cartridge Company.
Q. How long have you been with the Company?
A. I was first employed in 1916, and I went out a couple of times.
Q. What is your position with the Company?
A. Shift foreman.
Q. How long have you held that position?
A. I would say eleven years, approximately.
Q. Did you have William Elliott working under you, Mr. Terry?
A. Yes, sir.

* * * * *

1395 Q. Mr. Terry, what do you know about a proposed change in shifts that was being submitted to the men about that time?
A. There was a new schedule presented to the men for their opinion on it.
Q. Did you have anything to do with presenting that to the men?
A. I did.
Q. Did you submit it to Elliott?
1396 A. I did.
Q. What did Elliott say about it?
A. He said he would rather not say yes or no whether he wanted the schedule or the other.
Q. Did he say why?
A. Yes, he said he didn't think he would get as many hours under the new one as the old one.
Q. What else did he say, if anything?
A. That is the only objection he stated to me.
Q. Did he state anything more than that?
A. Yes, sir.

Q. Did you report that matter to Mr. Carlton?
A. I did.
Q. And Mr. Carlton later talked with Mr. Elliott?
A. He did.
Q. Were you present at that time?
A. No, I wasn't present at that time.
Q. You do not know anything about Elliott's conversation with Carlton?
A. No.

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Cross-Examination.

Q. (By Mr. Evans.) Who gave you instructions to go around and question the men about this?
A. The shift foreman I relieved.
1397 Q. Who was that?
A. Mr. Keil.
Q. What did he say to you?
A. He said they would like to know whether the new schedule, the men wanted it or wanted to work under the one they were working under.
Q. Did he give you a list of names?
A. No. We have our men, you see, on our shift, I believe there were 28 men, and naturally when you haven't more men than that you know each one.
Q. Did you have a list you went around and asked them?
A. Yes, we had a list, because we had a clerk in the office to make out a list for their timecards, and we have to have a list.
Q. Did you mark down what each one thought about it?
A. Yes.
Q. Did you turn it into the office?
A. Yes.
Q. Did anybody except Elliott raise any questions about it?
A. Some of them said "No."
Q. Some of them said they didn't want it?
A. Yes.
Q. Did you report that to Carlton, too?
A. No. What I was doing was trying to get the opinion

of all of the men in the group as to whether this new
1398 schedule was satisfactory with them or not.

Q. But you mentioned Elliott particularly did you?
A. No.
Q. Was it just on the paper that you turned in?
A. That was just regular routine.

* * * * *

1409 FRANK C. KRATSCHMER, a witness, called by and on behalf of the Respondent:

* * * * *

Direct Examination.

* * * * *

Q. Where are you employed?
A. Western Cartridge Company.
Q. How long have you been with the Company?
A. Approximately 22 or 23 years.
Q. What position do you hold with the Company?
A. At present I am manager of the brass mill office.
Q. In 1937 what position did you have?
A. I was scrap clerk.

* * * * *

1410 Q. As scrap clerk were you foreman or supervisor there over employes?
A. No. They just had one clerk, and I was that.
Q. And you were it?
A. Yes, sir.
Q. Were you a member of the Western Cartridge Employes independent union?
A. One month.
Q. You were a member for one month?
A. Yes, sir.
Q. Do you remember what month that was?
A. The first month they operated; I can't tell you the date.

* * * * *

1411 *Cross-Examination.*

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1414 Q. Did you discharge Mrs. Elliott last summer?
1415 A. Yes, sir.
Q. The same day that Bill Elliott was discharged?
A. I don't remember whether it was the same day or not.
Q. On whose orders did you discharge Mrs. Elliott?
A. It was my own orders as far as orders were concerned.
Q. With whom did you discuss the matter?
A. Mr. P. W. Day.
Q. What was your discussion with Mr. P. W. Day?
A. I didn't thing she was doing her work. That was before Bill was discharged.

* * * * *

Redirect Examination.

1416 Q. (By Mr. McRoberts.) You say you let Mrs. Elliott out? You discharged her?
A. Yes, sir.
Q. What was the reason for her discharge?
A. In this discussion with Mr. Day I was dissatisfied with her work.
Q. You were dissatisfied with her work?
A. I was dissatisfied.
Q. You were dissatisfied with her work?
A. That is right.
Q. You asked Mr. Day about it and he approved your action?
A. I talked with him long before and finally it came to a head and they had to.

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1461 THOMAS WORTZ, a witness, called by and on behalf of the Respondent herein,

* * * * *

Direct Examination.

Q. (By Mr. McRoberts.) Mr. Wortz, you have already testified before in this case and identified yourself as superintendent of the smokeless powder division, not the East Alton Manufacturing Company?

A. That is correct.

* * * * *

1480 Q. Mr. Wortz, Mr. Ellis McPherson testified that he had different conversations with you, and in May, the first one in your office, he testified to this effect—

Trial Examiner Ruckel: Who was this witness?

* * * * *

1489 Q. Mr. Bunzy testified that following this meeting in Mr. Schotters' office about which you just testified that you called him down to the office and he went 1490 there, that you told him to come in and sit down "and he said 'Bunzy, I have heard your name a lot', he said 'and I was surprised to see you when you came in the office over here. I expected a man about fifty years old, and a rough sort of a fellow, being mixed up with a union like you are', and he said 'You are a young fellow, and you have a nice personality,' and, I don't know, a lot of stuff, about a good looking fellow and the fellows like me, and he said 'How old are you?' and I said 'Twenty-eight', and he said I could go places with the Company if I would make myself right with them. He said if I would come down to school I could go to Pete Brown and he would teach me how to handle business, or something, and I told him I didn't want it, and he said 'How come we want a union, and what did we want by it, and I told him we wanted working conditions, and he said 'Well, you fellows are intelligent. Why don't you come in as a committee and talk with me about it, instead of going over to East St. Louis and get a potbellied racketeer to do your business for you?' and he gave the union hell at great length.

He just said that it was no good and anyone that belonged to it was no good, and it was a bunch of guys that were bosses and wouldn't work, and they would have the good fellows carrying them through.

"So he said if we would consider it he would show us a contract that they had with other companies—that he
1491 had took part in with other companies. I believe he mentioned Bethlehem Steel or some other steel company.

"And I told him no, I didn't care for it, and he asked me again if I would care to come down to school, and I said no, if I would come down to school and don't go to union meetings and work with the fellows, it would just be playing both ends against the middle and it would not last, so I would go ahead with the union, and I just thanked him and went out.

"Q. Did he mention anything as to what would happen to your dues?

"A. Oh, he said 'How does them buys get the money? How do they get to live like they do off of you fellows' wages', he said, 'Why don't you have a union of your own?' he said. He said 'We know our troubles here and our jobs. We can straighten them out ourselves instead of having to walk the streets and striking.' He said 'We would be like the Monsanto Chemical Works and the automobile companies in this locality' ".

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1516 FOREST MONICAL, a witness, called by and on behalf of the Respondent herein,

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Direct Examination.

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Q. Where are you employeed?

A. At the East Alton Manufacturing Company.

1517 Q. Before that were you employed by the Western Cartridge Company?

A. Yes sir.

Q. How long were you with the Western Cartridge Company?

A. I have been with the Western since January 13th, 1941.

Q. What position did you have with the Western Cartridge Company then?

A. I was supervisor of production, smokeless powder.

Q. And you hold the same position at the East Alton Manufacturing Company?

A. That is right.

* * * * *

1518 Q. Mr. Monical, did Ellis McPherson work under you?

A. Yes, he did.

Q. Mr. Monical, Mr. Ellis McPherson testified, at page 639 of the transcript, that he had a conversation with you about the A. F. of L. union, which he says took place right outside of the hardening house, in which he testified that you said—"He asked me"—he is referring to you—"which I thought could do the most for me, the company or the union. Well, I told him 'I am not in a position to say right now, but I will tell you just exactly what I told Mr. Arnold, I will stay where I am until they offer me

1519 something, or there is something else doing.'" Did you have any such conversation with Mr. McPherson?

A. No, I did not.

Q. Did you ever have any conversation with Mr. McPherson in which the A. F. of L. union or any other union was discussed?

A. I don't remember of any.

* * * * *

Cross-Examination.

* * * * *

1520 Q. Did you have any conversation with McPherson in which he asked you about the union?

1521 A. I don't remember.

Q. Might you have had such a conversation?

Mr. McRoberts: You mean just a conversation about the union?

Mr. Evans: Yes.

Trial Examiner Ruckel: Conversation in which the union was mentioned.

A. I don't remember of having had any with McPherson.

Q. Do you remember the names of any of these men that you had discussions with about it?

A. No, I couldn't name any individual.

* * * * *

2351 Trial Examiner Ruckel: It is so understood.

Mr. Evans: It is stipulated by and between the parties that Mrs. Mary Elliott, wife of William Elliott, if called to testify would testify that she was discharged by a Mr. Kratschmer at noon on July 25, 1941, shortly after William Elliott had been discharged; and that Kratschmer said nothing to her at that time concerning any records or confidential information or reports.

That she was given a check that day before leaving the plant, which paid her up to August 1, 1941.

That she received a call on August 7, 1941, went to the plant, at which time she was put to work in the brass mill warehouse office, an office which she had previously worked in before working for Mr. Kratschmer; and that her next check contained pay from August 1, 1941, and that she did not divulge any production records or other confidential information or reports to her husband.

Mr. McRoberts: It may be so stipulated; subject, however, to the objection to the materiality and competency of the testimony, as not being covered within the complaint, and it is not material to any of the issues in the complaint. Subject to the further objection as to its materiality, on which I think possibly we should ask for a ruling.

2352 Trial Examiner Ruckel: Objection overruled.

Mr. McRoberts: Subject to that ruling, we will stipulate that the witness, if present, would so testify.

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BOARD EXHIBIT NO. 3-A.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Fourteenth Region

In the matter of— Western Cartridge Company, East Atlon, Ill., and Chemical Workers, Local Union No. 22574, affiliated with the A. F. of L., *Petitioner.*	Case No. XIV R. 220.

PETITION FOR INVESTIGATION AND CERTIFICATION OF REPRESENTATIVES PURSUANT TO SECTION 9(c) OF THE NATIONAL LABOR RELATIONS ACT.

Name of employer Western Cartridge Company.

Address East Alton, Illinois.

General nature of business Manufacture of cartridges and shells and other high explosives.

Approximate total number of employees 6,000 Description of the bargaining unit which petitioner claims is appropriate Production and maintenance employees in the smokeless powder division, including hourly-paid foremen, and excluding superintendents, general foremen, watchmen, and office employees.

Approximate number of employees in such unit 368.

Number or percentage of employees in such unit who have designated or selected petitioner to be their representative for collective bargaining 301.

Names of any other known individuals or labor organizations who claim to present any of the employees in such bargaining unit Independent organization not functioning in smokeless powder division.

The undersigned hereby alleges that a question has arisen concerning the representation of the employees in the above bargaining unit, in that: Employer questions the appropriateness of the unit claimed by petitioner.

The undersigned further alleges that said question concerning representation is a question affecting commerce within the meaning of said act.

The undersigned requests that pursuant to section 9(c) of the National Labor Relations Act, the National Labor Relations Board investigate such controversy and certify to the parties the name or names of the representatives that have been designated or selected by said employees.

Name and address of employees or representatives filing the petition. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

Chemical Workers, Local Union No. 22574,
affiliated with the A. F. of L.,
By Fred Olds,
Fred Olds, Organizer,
1411 N. Grand Blvd.,
St. Louis, Mo.

Subscribed and sworn to before me this 25th day of March, 1941 at St. Louis, Missouri.

Dorthea Schweinitz,
Regional Director.

(Seal)

BOARD EXHIBIT NO. 3-B.

UNITED STATES OF AMERICA.

BEFORE THE NATIONAL LABOR RELATIONS BOARD.

In the Matter of Western Cartridge Company and Chemical Workers, Local Union No. 22574, A. F. L.	Case No. R-2494.

Mr. R. H. McRoberts, of St. Louis, Mo., Mr. Donald W. Ebbert, of Pittsburgh, Pa., and Mr. R. R. Casteel, of Alton, Ill., for the Company.

Mr. Fred Olds, of St. Louis, Mo., for the Chemical Workers.

Mr. Frederic B. Parkes, 2nd, of counsel to the Board.

DECISION AND DIRECTION OF ELECTION.

Statement of the Case.

On March 28, 1941, Chemical Workers, Local Union No. 22574, A. F. L., herein called the Chemical Workers, filed with the Regional Director for the Fourteenth Region (St. Louis, Missouri) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Western Cartridge Company, East Alton, Illinois, herein called the Company, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On April 14, 1941, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 2, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

On April 15, 1941, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company and the Chemical Workers. Pursuant to notice a hearing was held on April 21, 23, and 24, 1941, at East Alton, Illinois, before L. N. D. Wells, Jr., the Trial Examiner duly designated by the Chief Trial Examiner. The Company and the Chemical Workers were represented by counsel or official representatives and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. During the course of the hearing the Trial Examiner made various rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed. On May 8 and 12, 1941, respectively, the Chemical Workers and the Company filed briefs which the Board has considered.

Upon the entire record in the case, the Board makes the following:

Findings of Fact.

I. The business of the Company.

Western Cartridge Company, a Delaware corporation, operates a plant at East Alton, Illinois, where it is engaged in the manufacture, sale, and distribution of small arms ammunition, explosives, brass, brass specialties, traps, and targets. The raw materials used by the Company include copper, lead, zinc, steel, paper, tin, limestone, pitch, oil, lumber, wood, coal, and chemicals. During the year 1940, the Company purchased for use at its East Alton plant raw materials valued at approximately $9,000,000, of which more than 50 per cent were purchased and shipped from points outside the State of Illinois. During the same period, the Company manufactured and sold products of its East Alton plant valued at approximately $20,000,000, of which over 50 per cent were delivered to points outside the State of Illinois. The Company employs approximately 6,000 employees.

II. The organizations involved.

Chemical Workers, Local Union No. 22574 is a labor organization affiliated with the American Federation of Labor, admitting employees of the Company to membership.

Western Catridge Employees Independent Union, herein called the Independent, is an unaffiliated labor organization, admitting to membership employees of the Company.

III. The question concerning representation.

In January 1941 the Chemical Workers began organizational activities among the employees of the smokeless powder division of the Company. On March 7, 1941, the Chemical Workers requested exclusive bargaining rights for such employees. After several conferences with the Chemical Workers the Company refused to grant such recognition, on the ground that the employees of the smokeless powder division do not constitute an appropriate unit.

The Company contends that a subsisting contract with the Independent constitutes a bar to a present determination of representatives. On August 12, 1937, the Company and the Independent entered into a written "basic" agreement in which the Company recognized the Independent as the exclusive bargaining representative of all employees of the Company at its East Alton plant and provided that the Company would bargain collectively with the Independent with respect to all matters not covered by individual contracts of employment between the Company and its employees.[1] The agreement further provided that it would be in force for 1 year "and thereafter until terminated by written notice given thirty days in advance by either party to the other." No such notice of termination has

1. It is the practice of the Company to enter into a contract with each employee after he has served a 3-months probationary period. Such contract is for a term of 6 months and is extended from year to year thereafter. The basic agreement of August 1937 recites that "Both the Company its employees have valuable rights under said [individual] contracts of employment which they desire to preserve, and said contracts are recognized as valid and binding upon both parties thereto."

ever been given and since the execution of the contract and pursuant thereto, the Company and the Independent have negotiated with respect to numerous terms and conditions of employment. The results of these negotiations have been embodied variously in memoranda, notices, and in the minute books of the Independent.

We are of the opinion and find that the basic agreement of August 1937 which is terminable at any time upon 30 days notice by either of the parties does not constitute a bar to a present determination of representatives.[2] In addition, the Independent, which was not represented at the hearing, in a letter to the Regional Director, expressly waived any bargaining rights it may have for the employees, in the unit found below to be appropriate.[3] A report of the Regional Director introduced in evidence at the hearing shows that the Chemical Workers represents a substantial number of employees in the appropriate unit.[4]

We find that a question has arisen concerning the representation of the employees of the Company.

IV. The effect of the question concerning representation upon commerce.

We find that the question concerning representation which has arisen, occurring in connection with the operations of the Company described in Section I above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

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2. *Matter of Union Switch and Signal Company* and *United Electrical, Radio and Machine Workers of America, Local* 610, 30 N. L. R. B. No. 30, and cases therein cited. It is plain that the individual contracts of employment between the Company and its employees do not constitute a bar to a determination of representatives. *Matter of The Gates Rubber Company* and *Denver Printing Pressmen and Assistants Union No.* 40, and *Denver Typographical Union, No.* 49, 8 N. L. R. B. 303.

3. Cf. *Matter of Sound Timber Company* and *International Woodworkers of America, Locals* 67 *and* 75, 8 N. L. R. B. 844.

4. The Chemical Workers filed 359 authorization cards, dated between January and April 1941, with the Regional Director, who found the signatures of 357 to be genuine and of 342 to be the names of persons on the pay roll of April 11, 1941. There are 368 employees in the appropriate unit.

V. The appropriate unit.

The Chemical Workers contends that all hourly paid production and maintenance employees of the smokeless powder division of the Company, including hourly paid foremen, technical employees, and maintenance clerks, but excluding superintendents, general foremen, watchmen, and office employees, constitute a unit appropriate for the purposes of collective bargaining. The Company claims that all hourly paid employees of the Company with the exception of superintendents and general foremen constitute an appropriate unit.

The smokeless powder division is geographically separated from the remainder of the Company's plant by a river, rod, and fence. The sole physical connection between the smokeless powder division and the remaining area of the Company's property is by a bridge over the river. In general, tetral, smokeless powder, and high explosives are manufactured in the smokeless powder division. Approximately 60 per cent of the powder is used by the Company in the manufacture of its munitions products. The remaining 40 per cent is sold to other munition makers.

In support of its contentions, the Company asserts that the entire plant is so functionally coherent and closely integrated that the unit should be plant wide in scope. It further claims that the smokeless powder division is only one of the Company's 41 departments and that its geographic separation from the remainder of the plant is required by safety laws of the State. The Company, in urging the broader unit, relies on its past bargaining history and the contract with the Independent. However, as we have indicated above,[5] the Independent has waived its claim to represent the employees in the smokeless powder division. The chemical workers has confined its organizational activities to the employees of that division and has not sought members among the employees of the other divisions of the plant. In view of these circumstances, we are of the opinion that a unit which coincides with the extent of the Chemical Workers' organization is appropriate.

5. See Section III, *supra*.

The Chemical Workers would exclude, and the Company include, office employees and watchmen, who are eligible to membership in the Independent if they are hourly paid. Because such employees have interests and perform functions differing from those of other workers, we have excluded them from the appropriate unit in previous cases involving a similar dispute as to their inclusion.[6] We shall exclude them from the unit herein.[7]

We find that all hourly paid production and maintenance employees of the smokeless powder division of the Company, including hourly paid foremen, technical employees, and maintenance clerks, but excluding superintendents, general foremen, watchmen, and office employees, constitute a unit appropriate for the purposes of collective bargaining, and that said unit will insure to employees of the Company the full benefit of their right to self-organization and to collective bargaining, and otherwise effectuate the policies of the Act.

VI. The determination of representatives.

We find that the question concerning representation which has arisen can best be resolved by means of an election by secret ballot. The Chemical Workers requested that the pay roll of April 19, 1941, be used to determine eligibility to vote. The Company asked that a current pay roll be used, if the Board ordered an election. We find no reason to depart from our customary practice and shall accordingly direct that the employees of the Company eligible to vote in the election shall be those in the appropriate unit who were employed during the pay-roll period immediately preceding the date of the Direction of

6. As previously stated, the Independent, whose contract covered these employees, has waived all rights with respect to the smokeless power division.

7. See *Matter of Lincoln Engineering Company* and *Tool & Die Makers Lodge 688 of the International Association of Machinists, District No. 9*, 25 N. L. R. B., 110; *Matter of Allied Laboratories, Inc., (Pitman-Moore Division)* and *Indianapolis Specialty Union No. 465, affiliated with the International Printing Pressmen and Assistants' Union affiliated with A. F. L.*, 23 N. L. R. B., No. 14; *Matter of The Electric Auto-Lit Company (Buckeye Bumper Division)* and *United Automobile Workers of America, Local 402, affiliated with C. I. O.*, 25 N. L. R. B., 123.

Election herein, subject to such limitations and additions as are set forth in the Direction.

Upon the basis of the above findings and upon the entire record in the case, the Board makes the following:

Conclusions of Law.

1. A question affecting commerce has arisen concerning the representation of employees of Western Cartridge Company, East Alton, Illinois, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.
2. All hourly paid production and maintenance employees of the smokeless powder division of the Company, including hourly paid foremen, technical employees, and maintenance clerks, but excluding superintendents, general foremen, watchmen, and office employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

Direction of Election.

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 2, as amended, it is hereby

Directed that, as part of the investigation authorized by the Board to ascertain representatives for the purposes of collective bargaining with Western Cartridge Company, East Alton, Illinois, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Fourteenth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Section 9 of said Rules and Regulations, among all hourly paid production and maintenance employees of the smokeless powder division of the Company, who were employed during the pay-roll period immediately preceding the date of this Direction, including hourly paid fore-

men, technical employees, maintenance clerks, and employees who did not work during such pay-roll period because they were ill or on vacation or in the active military service or training of the United States, or temporarily laid off, but excluding superintendents, general foremen, watchmen, office employees, and employees who have since quit or been discharged for cause, to determine whether or not they desire to be represented by Chemical Workers, Local Union No. 22574, affiliated with the American Federation of Labor, for the purposes of collective bargaining.

Signed at Washington, D. C., this 15th day of May 1941.

Harry A. Millis,
Chairman,
Edwin S. Smith,
Member,
Wm. M. Leiserson,
Member,
National Labor Relations Board.

(Seal)

BOARD EXHIBIT NO. 3-C.

Penalty for Private Use to Avoid Payment of Postage, $300

Post Office Department
Official Business

Registered Article
No. 1126
Insured Parcel
No.....

Postmark of Delivery
Office
East Alton
Jun 11
10 30AM
1941
Ill.

Return to Fred Olds
309 Church St.
East Alton, Ill.

Return Receipt

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

Frank Schotters
H. Venardos

Date of delivery 6/11, 1941

309 Church Street,
East Alton, Illinois
June 10, 1941

Mr. Frank A. Schotters, Manager
Western Cartridge Company
East Alton, Illinois

Dear Mr. Schotters:

The committee from the Chemical Workers Local Union #22574 of East Alton, Illinois, desires to meet with you on Friday, June 13, 1941, at two (2) o'clock at your office, East Alton, Illinois for the purpose of negotiating a contract pertaining to rates of pay, wages, hours of employment and other conditions of employment. The committee will consist ow Francis Bunzy, president of the Chemical

Workers Local #22574, East Alton, Illinois; Jack Otten, Recording Secretary, E. E. Anderson, Financial Secretary and myself. We should like for these men to be granted permission to be absent from work at this time.

Thanking you in advance for an early reply, I am

Fred Olds,
Organizer, American Federation of Labor.

F.O./S.

BOARD EXHIBIT NO. 3-D.

(Letterhead of Western Cartridge Company, East Alton, Illinois.)

June 13, 1941.

Mr. Fred Olds,
Organizer, American Federation of Labor,
309 Church Street,
East Alton, Illinois.

Dear Sir:

Under date of June 10, 1941, you wrote advising that the Committee from the Chemical Workers Local Union No. 22574, consisting of Mr. Francis Bunzy, President, Jack Otten, Recording Secretary, E. E. Anderson, Financial Secretary, and yourself, desired to meet with me for the purpose of negotiating a contract pertaining to rates of pay, wages, hours of employment and other conditions of employment.

At the outset, and before entering into any discussion or negotiations, and in order that there may be no misunderstanding with respect to the company's position, you, and the other members of said Committee, are hereby notified that the company is advised by its counsel and believes that the opinion and decision of the National Labor Relations Board rendered May 15, 1941, is erroneous both with respect to the law and the facts; that the company does not acquiesce in or agree to the correctness of such opinion and decision; that the company believes that the bargaining unit for which you propose to act is not an appropriate one; that the company now has in effect a collective bargaining agreement and a working agreement with the

Western Cartridge Employees' Independent Union which cover the employees in the proposed unit for whom you propose to act; that the company is advised by its counsel and believes that it is legally bound by said contracts; and that the company has not sought a review by the courts of the said decision of the National Labor Relations Board because it is advised by its counsel that the law provides no method for obtaining such a review at the present stage of the proceedings but that it will be entitled to such a review when, as and if the court shall enter an order under Section 10 (c) of the National Labor Relations Act.

Accordingly, and in order to preserve the company's legal rights in this respect, you are further advised (a) that the company does not intend, by meeting with you, to waive but, on the contrary, expressly reserves, its right to object to the correctness of said opinion and decision of the National Labor Relations Board and to seek, by appropriate proceedings, a review thereof by the courts; (b) that the company does not recognize the bargaining unit for which you propose to act as an appropriate bargaining unit within the meaning of the National Labor Relations Act; and (c) that the company does not recognize you, or your Committee, or Chemical Workers, Local Union No. 22574, affiliated with the American Federation of Labor, as the representatives for the purposes of collective bargaining under the provisions of the National Labor Relations Act of any of its employees within said proposed bargaining unit.

However, and subject to the reservation of the company's rights as above set forth, the company is willing to hear and consider whatever your Committee may have to say with respect to rates of pay, wages, hours and other conditions of employment, and thereafter to discuss such matters with you or your Committee, to such extent, if any, as it may deem advisable.

Very truly yours,
Western Cartridge Company,
F. A. Schotters,
Frank A. Schotters,
General Superintendent.

FAS/mh

BOARD EXHIBIT NO. 3-E.

UNITED STATES OF AMERICA.

BEFORE THE NATIONAL LABOR RELATIONS BOARD.

In the Matter of Western Cartridge Company and Chemical Workers, Local Union No. 22574, A.F.L.	Case No. R-2494.

CERTIFICATION OF REPRESENTATIVES.

On May 15, 1941, the National Labor Relations Board issued[1] its Decision and Direction of Election in the above-entitled proceeding. Pursuant to the Direction of Election, an election by secret ballot was conducted on May 26, 1941, under the direction and supervision of the Regional Director for the Fourteenth Region (St. Louis, Missouri). On June 2, 1941, the Regional Director, acting pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 2, as amended, issued an Election Report, copies of which were duly served upon the parties. No objections to the conduct of the ballot or to the Election Report were filed by any of the parties.

As to the balloting and the results thereof, the Regional Director reported as follows:

Total number eligible to vote	527
Total number of ballots cast	459
Number of ballots challenged	0
Number of blank ballots	0
Number of void ballots	0
Total number of ballots counted	459
Total number of ballots for Chemical Workers, Local Union No. 22574, affiliated with the American Federation of Labor	377
Total number of ballots against Chemical Workers, Local Union No. 22574, affiliated with the American Federation of Labor	82

1. 31 N. L. R. B., No. 148.

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, and pursuant to Article III, Sections 8 and 9, of National Labor Relations Board Rules and Regulations—Series 2, as amended,

It Is Hereby Certified that Chemical Workers, Local Union No. 22574, affiliated with the American Federation of Labor, has been selected by a majority of hourly paid production and maintenance employees of the smokeless powder division of Western Cartridge Company, East Alton, Illinois, including hourly paid foremen, technical employees, and maintenance clerks, but excluding superintendents, general foremen, watchmen, and office employees, as their representative for the purposes of collective bargaining, and that, pursuant to the provisions of Section 9 (a) of the National Labor Relations Act, Chemical Workers, Local Union No. 22574, affiliated with the American Federation of Labor, is the exclusive representative of all such employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

Signed at Washington, D. C., this 13 day of June 1941.

Harry A. Millis,
Chairman,
Edwin S. Smith,
Member,
Wm. M. Leiserson,
Member,
National Labor Relations Board.

(Seal)

BOARD EXHIBIT NO. 3-F.

United States Conciliation Service.

Re: Western Cartridge Company, Alton, Illinois.

Agreement dated June 23, 1941, between Fred Olds, Francis Bunzy, Jack Otten, and C. Crosnoe, representing Chemical Workers Local Union #22574 affiliated with the American Federation of Labor, and R. R. Casteel, Assistant Secretary, representing the Western Cartridge Company:

The company recognizes Local Union #22574 as sole bargaining agent for the employees in the Smokeless Powder Division except those excluded by the National Labor Relations Board in its decision and direction of election in Case #R-2494, with the understanding that any contract agreed upon shall be for one year and that as a part of such contract, there shall be provided as follows: "By signing this contract, neither the union nor the company waives its right to contest the appropriateness of the unit for collective bargaining covered herein at or after the termination of this contract."

For Local Union #22574,
Fred Olds,
Francis Bunzy,
Cecil Crosnoe,
Jack Otten.

For the Company:

.....

BOARD EXHIBIT NO. 3-G.

(Form of Western Union Telegram.)

OPB LD268 IM 3 MINS GOVT TWS

OPB Washington DC June 24, 1941 602P

Fred Olds General Organizer (RPT DLY IMMY)

American Federation of Labor, Anapolis Hotel Wash., D. C.

The Secretary of Labor under the authority of the executive order of March 19, 1941, has certified to this Board that the dispute between the Western Cartridge Company and the Chemical Workers Union Local 22574 AFL threatens to burden or obstruct the production or transportation of materials or equipment essential to National Defense and cannot be adjusted by the Commissioners of Conciliation of the Department of Labor. The Board is setting this matter for hearing before a division of its members at ten A. M. Est. on Friday June Twenty-Seventh 1941, in room 3522 New Social Security Building Washington, D. C. You and your committee are requested to be present at this hearing. In the meantime in view of the present unlimited national emergency recently proclaimed by the president the Board calls upon both parties to see that there is no interruption of production pending the Boards consideration of this matter. Please Reply.

William Hammatt Davis Acting Chairman
National Defense Mediation Board.
613P

BOARD EXHIBIT NO. 3-H.

(Letterhead of Western Cartridge Company, East Alton, Illinois.)

July 3, 1941.

To All Western Employees:

We desire to acquaint our employees with the full facts in connection with the controversy that has existed between the Company and Chemical Workers' Union, Local No.

22574, which has been given much prominence in the daily press.

For nearly three weeks, the Company has been trying to find out what this union wants. They have told us they have a contract they want us to sign, but beyond the fact that they are demanding recognition, no other information has been given us.

As most of you know, this Company has entered into an individual contract with practically every eligible hourly-paid employee in every department of its East Alton plant. We believe these individual contracts are a great benefit both to the Company and to our employees, and that they constitute a legal obligation between the Company and the employee. However, we have been told that one of the objects of the Chemical Workers' Union is to do away with them.

The Company also considers as a valid and binding contract its agreement to recognize the Western Cartridge Company Employees' Independent Union as the sole bargaining agent for all its employees at the East Alton plant, this agreement also covering vacations, seniority, overtime, grievance procedure, absence on military service, and other conditions. Accordingly, when notified of a recommendation of the National Defense Mediation Board that the company recognize the Chemical Workers' Union as bargaining agent for the small unit called the "Smokeless Powder Division," the company, in an attempt to end this controversy and maintain peace and harmony among all its people, replied in part as follows:

In your Findings and Recommendations you recommend "that the Company should now bargain in good faith with the Chemical Workers' as the exclusive representatives of the employees in the unit certified by the National Labor Relations Board as appropriate." If by that recommendation you mean that this Company should bargain in good faith with the representatives of the Chemical Workers' Union, at the same time preserving its legal right to Court review in the event that an agreement cannot be reached, then we beg to advise that the Company has ever been and is now ready to engage in such bargaining. If, on the contrary, the Board means that the Company must forever

waive its legal right to a Court review of the decision of the National Labor Relations Board which it believes to be arbitrary, capricious, and not supported by adequate legal evidence, then this Company finds it impossible to comply with the recommendation.

"We most seriously urge the Mediation Board to consider our problem from the standpoint of efficient management. It is our deep desire to continue the business of this Company and at the same time to perform its best function for the Government in this national emergency. If the decision of the National Labor Relations Board as to the appropriateness of the proposed bargaining unit is correct, then it necessarily follows that the manufacturing operations performed in the so-called Smokeless Powder Division should be divorced from the remainder of the Company's operations at East Alton and be disposed of by appropriate legal steps to a new and independent corporation. If it is an appropriate bargaining unit it should also be an appropriate economic unit.

"If it is necessary for this Company to bargain separately for this unit, then we are prepared to explore the possibilities of reorganizing the operations of the Company's plant and business and of taking the necessary steps to create a separate integrated economic unit for the so-called Smokeless Powder Division. The implications of the problems which would follow such action by this Company are obvious but not so insurmountable as to take the step which the Board recommends. Obviously, these problems cannot be solved on a moments notice but we are prepared to seek such solution promptly if the Mediation Board and Chemical Workers' Union are willing to accept such a solution and are prepared to cooperate. If this suggestion appears to afford a means of settling the controversy, please advise us at your earliest convenience."

The foregoing offer of cooperation indicates clearly the Company's sincere desire to maintain uninterrupted production on National Defense contracts, and at the same time to preserve its own legal rights, to safeguard the legal rights of its employees holding individual contracts, and to fulfill its legal responsibilities under its contract with the Independent Union.

We have been advised this afternoon by the National Defense Mediation Board that the foregoing proposal on the part of the Company is acceptable and the Company is proceeding with arrangements in accordance therewith.

The East Alton plant will resume operations as usual with the shift commencing at eight o'clock next Monday morning, July 7, 1941.

Western Cartridge Company.

BOARD EXHIBIT NO. 3-I.

(Form of Western Union Telegram.)

AAM 204 6 MIN GOVT TWS-WUX Washington D. C. 3 558P.

1941 Jul 3 PM 5 18

Fred Olds, (Report DLY IMMY)-
309 Church St. East Alton, Ill.-

I have today wired J. M. Olin President Western Cartridge as follows: Quote. Relet July 2. The Mediation Board expresses no opinion as to whether by such bargaining as the Board recommends your company waives or retains any supposed legal rights to a court review of the decision of the National Labor Relations Board. The Board now suggests to you and it is making the same suggestion to the Union that you meet with the representatives of the Chemical Workers at ten o'clock Saturday morning July 5, 1941 for the purpose of entering into negotiations as to wages, hours and conditions of employment of all the employees in the bargaining unit found appropriate by the National Labor Relations Board it being understood and agreed: one that if either party decides that no worthwhile progress is being made in the negotiations and so notifies the chairman of the Mediation Board then the Mediation Board will call the parties back to Washington for continuation of the collective bargaining before the Board in accordance with the full procedure laid down in the executive order of march 19, 1941. Two that production will be continued without stoppage during and throughout the negotiations and the further pro-

ceedings before the Mediation Board if the case is brought back to Washington. The Union has been notified that your company proposes to reorganize the operations of the company's plant and business and to take the necessary steps to create a separate integrated economic unit for the socalled Smokeless Powder Division. End quote. Please let me have your reply by telephone and confirmation by telegram immediately upon receipt of this.

William Hammatt Davis,
Chairman National Defense Mediation Board.

2 5 1941 19 1941.

BOARD EXHIBIT NO. 3-J.

(Form of Western Union Telegram.)

July 5, 1941.

Mr. William H. Davis, Chairman National Defense Mediation Board,
New S. S. Board, Washington, D. C.

Chemical Workers, local No. 22574 at East Alton, Illinois, met in conference with representatives of the Western Cartridge Company today. And we do not feel that we can or have accomplished anything. We therefore request as per your telegram of July 3, 1941 that the Company and the Union representatives be required to return to Washington, before the Mediation Board to complete negotiations as to wages, hours of employment and other conditions of employment. And take up this question of the individual contracts.

Copy sent Frank A. Schotters, General Supt. Western Cartridge Company.

Fred Olds,
Org.
A. F. of L.

BOARD EXHIBIT NO. 3-K.

(Form of Western Union Telegram.)

EB 143 GOVT TWS PAID 3-VIA EB NHLN-Washington D. C. 7 649P.

Fred Olds (RPT DLY IMMY)-

Organizer AFL, 605 North 28 St., East St. Louis, Ill. (DLY STL)-

Delr 830AM

This will acknowledge your request of July 6, 1941 that the negotiations between the Western Cartridge Company and Local 22574 of the Chemical Workers Union, AFL, be continued before the National Defense Mediation Board in Washington. In view of this request the Board has scheduled a further hearing in this case on Friday July 11, 1941 at 10:00 AM EST in room 3522 New Social Security Building, Washington, D. C. You and such of your associates as you desire are requested to be present at this hearing. In the meantime the Board urges both parties to continue negotiations in an effort to arrive at a complete agreement before the scheduled hearing. If such an agreement should be reached you are requested to notify me at once.

Ralph T. Seward,
Executive Secretary National Defense Mediation Board.

6 1941 22574 AFL 11 1941 10:00 AM EST 3522.

BOARD EXHIBIT NO. 3-L.

Agreement.

This Agreement, made by and between the East Alton Manufacturing Corporation, a corporation of the state of Maryland, with its principal office and place of business in East Alton, Illinois, its subsidiaries, successors and assigns, Party of the first part, hereinafter called the "Company" and the Chemical Workers Local Union, No. 22574,

an affiliate of the American Federation of Labor, and of the International Council of Chemical and Allied Industries Unions, Party of the Second part, hereinafter called the "Union," Witnesseth That:

Article 1. Term.

This agreement shall be effective as of August 1, 1941, and continue in full force and effect for a period of one (1) year thereafter, and shall be automatically extended for each subsequent yearly period unless either the Company or the Union shall give notice in writing not less than thirty (30) days nor more than (60 days prior to the expiration of any such yearly period that they wish to amend or terminate this agreement. In the event either party serves such notice of intention to amend within thirty-five (35) days of the expiration of any such yearly period, the other party shall have five (5) days within which to serve a like notice of intention to amend or terminate this collective bargaining agreement, any limitations above to the contrary notwithstanding. If such amendments are proposed, the notice shall designate the article or articles it is desired to amend and all other articles of this agreement not so designated shall automatically continue in full force and effect. Negotiations with regard to the subject of any such notice will start not less than twenty (20) days prior to the expiration date of the yearly period.

Article 2. Recognition.

The Company recognizes the Union as the sole and exclusive collective bargaining agency for its employees now or hereafter performing the work now being performed by its hourly-paid production and maintenance employees, including hourly-paid foremen, technical employees, and maintenance clerks, but excluding superintendents, general foremen, watchmen and office employees. The Company further agrees that all working regulations as set forth in this agreement with respect to rates of pay, wages, hours of employment and other conditions of employment shall apply to all of its employees above mentioned.

Article 3. Grievance Procedure.

It is agreed that the Union, through its accredited representatives, may meet and adjust with the Company any discharges, suspension or other grievance which may arise concerning employees of the Company represented by the Union. If an agreement with respect to such discharge, suspension or other grievance is reached between the representatives of the Company and the accredited representatives of the Union, such agreement shall be reduced to writing, signed by, and be binding on both parties thereto.

Any grievance arising under the terms of this contract shall be handled in the following manner:

The aggrieved employee shall first discuss his grievance with the foreman or supervisor of his department. Should they fail to reach a satisfactory adjustment of the grievance the employee may, within not more than five (5) working days thereafter, together with an accredited Union representative or representatives, take the matter up with the authorized representative of the Company, having first stated in writing the facts with respect to his alleged grievance. If the result of such discussion is unsatisfactory to the employee involved, a duly authorized grievance committee for the Union will, within not more than five (5) working days thereafter, meet with a committee appointed by the Company to attempt settlement of the grievance.

Except in emergency, a notice of any grievance to be discussed with the grievance committee shall be submitted to the Company in writing at least two days prior to the day on which a conference is requested, in order that the necessary information may be available without loss of time on the part of the grievance committee or the Company.

When any employee has been discharged for cause the Company, upon request of the Union, will join the Union in making an investigation with respect to the cause of such discharge.

If pursuant to such joint investigation, it shall be agreed by both the Company and the Union that such cause is insufficient to warrant discharge or that there is not sufficient proper evidence of the alleged cause of such dis-

charge, then and in that event such employee shall be reinstated to his position, with uninterrupted seniority, and with pay allowed for the period of his suspension. In cases in which the Company and the Union may agree merits such action, such employee may be reinstated without pay allowance.

If the Company and the Union shall fail to adjust a grievance under the procedure above provided for it may be arbitrated, with the consent of both parties, in any manner which they may both agree upon; provided, however, that nothing herein contained shall be construed as requiring either party to arbitrate such grievance. Nothing herein contained shall prevent the Union from exercising the right to strike because of any such grievance which has not been adjusted if the procedure for the adjustment of grievances hereinabove set forth has been carried through to completion without an adjustment having been reached, and if the Union shall give five days written notice of its intention to call the strike and the reason therefor.

Article 4. Reporting for Work.

Employees required to report at regular starting time and place and who, through no fault of their own, are not permitted to work on their regular job, shall be given, whenever possible without affecting any regular employee, a full days work. In no case shall such employee receive less than four (4) hours pay regardless of the actual time worked; provided, however, that the Company shall not be required to make any such payment if failure to provide work is due to a cause or causes entirely beyond the control of the Company.

Article 5. Leave of Absence.

No Union representative shall lose pay by reason of being required to attend conferences between the Company and Union representatives during working hours. No other business for the Union except such conferences shall interfere with the regular duties of employees, except that accredited representatives of the Union shall be given leave

of absence without pay, not exceeding ten (10) working days consecutively, to attend conventions or other official business of the Union. It is agreed that ten (10) days' notice of each request for such leave of absence will be given to the Company, except in emergencies, and that not more than five (5) employees shall be absent at any one time for such purpose or purposes.

Any employee whose continued absence over a longer period of time is necessary because of his duties as an elected or appointed officer of the Union or by reason of any Governmental appointment will be given leave of absence, without pay, for such purpose. Upon his retirement from such office or appointment he shall be entitled to return to his old position, or a position of the same class, if available, upon condition that he shall report within thirty (30) days from the time his term in such Union office or his Governmental appointment shall expire.

Article 6. Military Service.

Employees with established seniority who are called and inducted into service under the Selective Service Act, or as members of the National Guard, Officers' Reserve Corps, or Naval or Marine Reserve Corps, shall accumulate without interruption all seniority rights during the period of such service. Upon completion of such service, each employee shall be restored to his former position (or, if this has been discontinued, to a like position) according to his seniority rights, unless circumstances have so changed as to make it impossible or unreasonable to do so; provided that such employee has not voluntarily reentered such service after being offered an opportunity of demobilization that he makes application within forty (40) days after he has been honorably discharged from such service, and that his physical and mental condition is such that he can satisfactorily handle such job.

This provision shall be further extended to include employees subject to call under the Selective Service Act who may elect to volunteer for their required training in advance of actual call by their local board and to employees who have been called but rejected prior to induction.

Article 7. Bulletin Board.

A bulletin board shall be provided in a conspicuous place within the confines of the plant proper where notices of Union meetings and other official Union business may be posted from time to time; provided, however, that such notices shall contain nothing political, or derogatory to the Company, the Western Cartridge Company, any of the Company's or the Western Cartdrige Company's employees, or any labor organization among the employees of either of them.

Article 8. Management Functions.

The management of the plant, including, but not limited to, the direction of the working forces, the right to hire, promote, demote, suspend, or discharge for cause, and to relieve employees from duty because of lack of work, and to transfer employees from one section or duty to another, is vested exclusively in the Company. The foregoing management functions shall not be used for the purposes of discriminating against any employee because of membership in the Union or for the purpose of violating any of the provisions of this agreement.

Changes on Company rules and orders affecting employees shall be posted on official bulletin boards provided for that purpose and signed by the proper officials of the Company, with the understanding, however, that such rules and orders shall not conflict with the terms of this agreement.

Article 9. Disabled Employees.

Employees who have rendered faithful and honest service to the Company and who have become unable to handle heavy work to advantage will be given consideration for such light work as may be available from time to time.

Article 10. Seniority.

In cases of promotions, transfers, and lay-off, where the factors of (a) ability to do the job in question, (b) attitude toward safety, and (c) skill, are approximately equal, seniority shall govern. Any dispute in regard to qualifications other than those listed above which the Company believes necessary to consider, shall be handled through the grievance procedure.

The Company agrees not to tolerate any favoritism by foremen or supervisors and to make available to qualified employees such opportunities for advancement as may arise from time to time, even though such employees are particularly qualified for their current jobs.

All employees laid off shall be returned in the reverse order of having been laid off, before new employees are taken on.

Employees shall be regarded as probationary employees during the first three (3) months of their initial employment, or re-employment after breaking of seniority. After three (3) months of continuous employment, employees shall be entitled to seniority rating, and their length of seniority rating shall date from their date of employment.

Seniority shall be broken for the following reasons:

(a) If the employee quits;

(b) If the employee is discharged for cause;

(c) If the employee is absent for three (3) working days or fails to return to work within five (5) working days after being notified to report for work, unless a satisfactory reason is given; or

(d) If the employee is laid off for twelve (12) months.

Article 11. Union Membership.

The Company agrees that any present employee who on June 24, 1941, was a member of the Union or who has become a member of the Union since June 25, 1941, shall, as a condition of continued employment, maintain membership on good standing; and any employee who hereafter, during the life of this agreement, becomes a member or is rein-

stated as a member of the Union shall, as a condition of continued employment, maintain membership in good standing.

Article 12. Individual Contracts.

There are now in existence approximately 423 individual contracts of employment between Western Cartridge Company and certain of the employees of the Company. The said contracts shall not be transferred to or assumed by the Company nor shall the Company offer to its employees and such individual contracts.

Western Cartridge Company or the Company will repay as of August 1, 1941, to each of the employees of the Company holding one of such individual contracts the amount he personally has paid to Western Cartridge Company under his contract, upon the signing by each such employee of a receipt and release in full of all further rights thereunder. Neither the Western Cartridge Company nor the Company will take any other steps to enforce such individual contracts with respect to any claims against the employees of the Company accruing after August 1, 1941.

The Company shall have the right to require as a condition of employment that each of its employees shall sign a contract of employment in the form of which a copy is attached hereto, and marked exhibit A.

Article 13. Accident Reserve Fund.

Both the Company and the Union agree that it is necessary to maintain such conditions and follow such working practices as may best be suited to produce safe plant operation and prevent accidents which might result in personal injuries, fatalities and loss of property. Accordingly, the Company agrees to award to its hourly-paid production and maintenance employees, including hourly-paid foremen, technical employees, a Bonus in accordance with the following plan:

An Accident Reserve Fund will be created by the Company by setting apart each month, commencing with the month of August, 1941, and concluding with the month of July, 1942, a sum equal to ..... per cent of the Company's

payroll for the said classes of employees during each preceding month. During the months of August, 1942, the Company will determine the balance, if any, left in this Accident Reserve Fund, after deducting the expenditures, and reserves for expenditures, in replacing property damage and in payment of personal injury and compensation liability claims resulting from accidents at the Company's plant during the period from August 1, 1941 to July 31, 1942. The balance then remaining in the Accident Reserve Fund shall be divided among the said classes of employees who are in the employ of the Company at the time of such distribution, together with those who have been laid off during said period. The percentage of such Accident Reserve Fund to which each such employee shall be entitled will be determined by dividing the total earnings of each said employee for the said period from August 1, 1941 to July 31, 1942 by the total of the Company's payroll during said period for all of such employees so entitled to participate in the distribution.

The Company agrees that regardless of the total actual payments or reserves for payment from said Accident Reserve Fund the Company will guarantee that the minimum distribution to said employees shall be equal to at least 1½% of the total wages paid to each such employee by the Company during the said period.

In the event of the non-operation of the plant of the Company due to any cause, the Company may, at its option, terminate the further operation of said Accident Reserve Fund, provided, however, that in the event of such operation termination the balance then remaining in said Accident Reserve Fund shall become due and payable immediately.

There shall be established a Joint Safety Committee consisting of representatives of the Company and of the Union which shall be charged with the duty of consulting and advising on safety problems for the mutual benefit of the Company and its employees. Said committee shall have the right to be kept advised with respect to the operation of said Accident Reserve Fund and to inspect the books and records in connection therewith.

Article 14. No Suspension of Work.

There shall be no suspension of work through strikes or any other stoppage, total or partial, on the part of the Union or any member of the Union, (except that the right to strike following the failure to adjust a grievance is reserved as set forth in Article 3 hereof), nor through lockouts on the part of the Company, during the term of this agreement.

Article 15. Wage Rates and Vacations.

The transfer of the employees formerly employed by Western Cartridge Company in its so-called smokeless powder division to the Company shall be deemed to have been made effective as of August 1, 1941.

The Company agrees to take over and adopt the applicable wage brackets which were in effect in said smokeless powder division of the Western Cartridge Company on August 1, 1941, and to advance each employee one full step in his bracket, the average wage increase effected thereby being approximately 5%; the said increase to be retroactive to July 13, 1941.

The Company further agrees that it will proceed forthwith, in consultation with appropriate representatives, committees and subcommittees of the Union, to make a thorough study and analysis of the said wage brackets and of each of the jobs to which they are applicable, and of wages being paid by others for similar work, in an endeavor to arrive at an agreement with the Union for the adjustment and correction of such inequalities and inconsistencies, if any, as may be found in said wages structure and for such further wage increases, if any, as may be justified. Any such adjustments, corrections, and increases, if any, shall be retroactive to July 15, 1941. At the same time the Company and the Union will endeavor to arrive at an agreement with respect to vacations and vacation pay.

If no such agreement shall have been reached by August 31, 1941, and if both parties hereto shall not agree prior to said date to an extension of time for the continu-

ation of such negotiations, then the negotiations with respect to such adjustments and corrections of inequalities, if any, and further wage increases, if any shall be deemed to have failed. In such last named event this agreement shall be and remain in full force and effect with respect to each and every other term and provision hereof, but neither the execution and delivery hereof nor anything herein contained shall be deemed to divest the National Defense Mediation Board of any jurisdiction over the Company, the Western Cartridge Company or the Union, which it may have heretofore acquired.

Article 16. Physical Examinations.

In the case of periodical physical examinations of employees conducted by the Company, the Company agrees to furnish the employee with an accurate summary of the physician's report, if any.

In Witness Whereof, the parties hereto have duly executed this agreement this 2nd day of August, 1941.

East Alton Manufacturing Company,
By J. M. Olin,
Vice-President.

Chemical Workers Local Union No. 22574,
By Francis Bunzy,
President.
Jack Otten,
Recording Secretary.
Cecil Crosnoe,
Committeeman.
Fred Olds,
Representative of American Federation of Labor.
H. A. Bradley,
President of International Council of Chemical and Allied Industries Unions.

Attest:
Spencer T. Olin,
Secretary.

BOARD EXHIBIT NO. 3-L.

Exhibit A.

This Agreement, made this ..... day of ....., 19..... by and between the East Alton Manufacturing Company, a corporation organized under the laws of the State of Maryland, as Party of the First Part, hereinafter called "Company", and ....., Party of the Second Part, hereinafter called "Employee", Witnesseth That:

Whereas, Employee desires to enter to continue employment in the employment (as the case may be) of the Company under an oral contract of employment and the Company is unwilling to permit Employee to do so unless Employee is willing to enter into this agreement.

Now, Therefore, in consideration of such employment of the Employee, and of the sum of One Dollar ($1.00) paid by the Company to the Employee, receipt of which is hereby acknowledged, it is hereby agreed:

1. That inventions and discoveries relating to the manufacture of explosives, or any products made by the Company, or any appliances connected therewith or applicable thereto, which shall be conceived, made, developed or perfected by, or which shall result in whole or part from the efforts of the Employee during the term of his employment by the Company and during a period of one year thereafter, shall be conclusively presumed to have been conceived, made and developed or perfected mentally or by research or experiment or carried on in whole or in part with material or apparatus owned or furnished by the Company and at the expense of the Company and, accordingly, any and all such inventions and discoveries shall belong solely to the Company and, upon its request, and at its expense, Employee shall make full disclosure thereof and sign, acknowledge and verify all applications, petitions, specifications, claims, powers of attorney and other instruments necessary, proper or convenient for the making of application for letters patent and the prosecution of such application or applications, and shall assign all such inventions and discoveries and letters patent to

be issued thereon to the Company, except as listed below. The Employee's obligation to execute the papers above referred to shall continue beyond the termination of the period of employment with respect to any and all of the inventions and discoveries hereinabove referred to and such obligation shall be binding upon the administrators, executors and assigns of Employee. The Company may, in its discretion, compensate or reward Employee for any such inventions or discoveries in any manner as to the Company may seem fit and proper.

2. Any other inventions and discoveries made, developed or perfected by or which shall result in whole or in part from the efforts of Employee during the term of his employment, which are not covered by the foregoing paragraph, shall be fully disclosed by the Employee to the Company and the Company shall have a reasonable time in which to investigate such inventions and discoveries and to negotiate with Employee for the purchase of the right to use the same, before Employee discloses or offers said inventions or discoveries to anyone else.

3. The Company declares and Employee acknowledges that by action of the Board of Directors the business of the Company has been declared a secret business and Employee agrees not to disclose to others not a party hereto any of the trade secrets, details or processes of manufacture or equipment or other information concerning or relating to the Company's business.

In Witness Whereof, the Company has caused its corporate name to be hereunto subscribed and its corporate seal to be hereunto affixed by its authorized officers and Employee has hereunto subscribed his name as of the day and year first above written.

East Alton Manufacturing Company,

By .....

.....

Attest:

.....

Secretary.

.....

Exceptions.

BOARD EXHIBIT NO. 8.

East Alton, Illinois
July 23rd, 1937

Mr. F. W. Olin,
President of the Western Cartridge Company,
East Alton, Illinois.

Dear Sir:—

This is to advise you that the Western Cartridge Employees Independent Union, of East Alton, Illinois, has been designated by a majority of the employees, of the Western Cartridge Company, to act as the exclusive agents, or representatives, of the employees of the plant for the purpose of a collective bargaining, in respect to rates of pay, wages, hours of employment and other conditions of employment, pursuant to the Wagner Labor Act, recently adopted by the United States Congress.

For your information the Representatives of the Union are as follows:

Division No. 1, Fred Plumb; Division No. 2, Virgil Keefe; Division No. 3, Conrad Barkley; Division No. 4, Clyde Mitchell; Division No. 5, Oliver Foster; Division No. 6, Berkeley Wilmering.

The officers of the Union are: Fred Plumb, Chairman, Virgil Keefe, Vice Chairman, Otis D. Sullivan, Secretary-Treasurer.

We are preparing data which we desire to be included in the working agreement and when same is completed will communicate with you requesting that a conference be held between the representatives of this Union, and the representative, or representatives, designated by the company for such purpose.

Yours very truly,

.....

Chairman.

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.....

Secretary-Treasurer.

BOARD EXHIBIT NO. 11.

W C 340 Western

Wage Assignment Clock No.

Instructions: Clock Number and Department must be shown. Our paydays are on alternate Fridays. Orders must be in Pay Roll Dep't. not later than Monday preceding payday. All Assignments will be handled in conformity with State Wage Assignment Law effective July 1, 1937.

Department

Date

To Western Cartridge Company, East Alton, Illinois:
I hereby authorize you to deduct from my wages, the sum of $..... Dollars divided into payments of $....., per pay period, beginning with pay period ending .....

.....

Make payment for my account to .....

..... for .....

.....

.....

Employee

Duplicate

For Employee

I Specifically Reserve the Right to Withdraw This Assignment at Any Time at My Convenience Upon Written Notice to the Company to Be Given at Least Five Days Before Pay Day.

BOARD EXHIBIT NO. 13.

Working Agreement.

This Agreement, entered into this 4th day of June, 1941, by and between the Western Cartridge Company of East Alton, Illinois, hereinafter called the "Employer," and the Western Cartridge Employees Independent Union of East Alton, Illinois, as the representative of the employees of Western Cartridge Company, hereinafter called the "Union,"

Witnesseth:

Whereas, the Employer and the Union entered into a Basic Agreement on the 12th day of August, 1937, which said Basic Agreement is in all things hereby confirmed; and

Whereas, under the provisions of said Basic Agreement it is provided that negotiations shall be had between the Employer and the Union with respect to any demands or grievances which may be initiated by either party to said agreement; and

Whereas, the parties have been negotiating on the matters hereinafter set forth and have agreed on a Working Agreement which shall be supplemental to said Basic Agreement and which is made in pursuance thereof;

Now, Therefore, in consideration of the premises, the parties have agreed and do hereby agree, pursuant to the terms of said Basic Agreement and subject to the terms of the written contracts of individual employment between the Employer and certain of its employees, as follows:

Section One.

Term and Renewal.

This agreement shall remain in force and effect until November 15, 1942, and for successive periods of one year each thereafter unless notice is given in writing by registered mail by either party hereto at least 60 days prior to any expiration date. Such written notice shall specify any changes or amendments desired and only such changes

or amendments as are contained in such notice shall be discussed in a conference which shall be arranged to begin during the next 30 days following the date of the giving of such 60 day notice. In case no agreement is reached on amendments under discussion by the expiration date following such notice, this contract will automatically expire unless both parties mutually agree to its extension during an additional negotiation period of not to exceed 30 days. The Basic Agreement hereinabove referred to is hereby amended as to term and manner of termination so as to extend during the term or any extended term hereof and be subject to termination in the manner hereinabove provided.

Section Two.

Definition of Overtime Work.

The term "Overtime work" as used in the written contracts of employment between the Employer and certain of its individual employees is hereby defined as including the following: all time worked in excess of 8 hours in a 24 hour working day; all time worked in excess of 40 hours in a calendar week; all time worked on Sundays, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas, except that in the case of employees whose regular schedule includes Sunday as a work day and in lieu thereof designates another day as Equivalent Sunday in the work week, such time worked on the scheduled Sunday shall be considered as straight time but any time required by the Employer to be worked on the designated Equivalent Sunday shall be considered as overtime.

Regular schedules shall not be changed temporarily to include Sundays in order to avoid payment of overtime. Schedules may be changed to include Sunday as a work day if four shifts or continuous operations are required on more than a temporary basis. For the purpose of calculating overtime Sundays and Holidays are considered as starting from 8:00 A. M. Employees shall not be laid off during the week to eliminate overtime requirements for Saturday and Sunday work, except as required by law. When time

and one-half pay is required for more than one of the aforementioned reasons it shall only be paid once for the same hours so worked.

Employees who are not employed under such written contracts of employment shall also be compensated at the rate of time and one-half for overtime worked as above defined.

The preceding definitions are adopted in the belief by both parties hereto that they comply with all existing Federal and State Laws and existing rules and regulations in regard to the hours of labor in National Defense work. Both parties recognize the need to revise and revaluate this section in accordance with any new laws and regulations applicable to the hours of labor on National Defense work.

Section Three.

Minimum Wage Rates.

An employee shall be paid not less than the prevailing minimum wage rate for his or her particular position, and such an employee who is placed on a job paying a higher rate of pay shall be paid the rate for such position. If such an employee is temporarily placed on a job with a lower rate of pay he may receive either his or her regular rate of pay or the maximum pay of the bracket for the lower paid job, unless and until he or she is permanently transferred to such lower paid position, when he or she shall receive the prevailing rate of pay for that particular position.

Section Four.

Grievance Procedure.

The Employer and the Union have mutually agreed to and signed a "Procedure for Cooperative Action to Remove Causes of Misunderstanding" on the 27th day of February, 1941, which is hereby included as a part of this Working Agreement, as effectively as if reproduced herein, with the exception that it may be modified during the period of this agreement by mutual consent of the parties hereto.

However, if the parties fail to adjust a grievance under the said Procedure, it may be arbitrated with the consent of the parties in any manner that they may agree upon. If the parties fail to agree to arbitrate such grievance, the restrictions against strikes in Paragraph One of Section Eight hereof shall not apply.

Section Five.

Seniority.

In all cases of a decrease or increase of the working force the Employer shall take into consideration, with respect to the group or department being decreased or increased, male and female employees being considered separately, the following factors: knowledge, training, ability, skill, efficiency, willingness to do the work in a competent and safe manner, physical fitness, family status, number of dependents, members of the family gainfully employed, and length of continuous service; and where the foregoing requirements are relatively equal, length of continuous service shall govern. Seniority shall not be deemed to apply to any employee with less than twelve (12) months continuous service.

However, it is understood that the above is merely a statement of operating policy which the Employer will endeavor generally to follow in the conduct of its business. The Employer specifically reserves the right to make reasonable exceptions to such policy in the future, and the Union recognizes the necessity of accepting such reasonable exceptions.

A voluntary quit, other than for military service as provided in Section Six, or a discharge shall interrupt continuous service and on re-employment thereafter, the employee's service record shall be treated as in the case of a new employee with no credit for former service. A layoff because of lack of work shall not be deemed an interruption of continuous service if the employee is recalled within one year and reports for work. Absence due to an industrial accident or occupational disease shall not be deemed an interruption of continuous service.

The employer agrees not to tolerate any favoritism by foremen or supervisors and to make available to qualified employees such opportunities for advancement as may arise, from time to time, even though such employees are particularly qualified on their present job.

In the event that any employee believes that he has been unjustly treated with respect to the preceding matters, the employee shall have the right to initiate a case under the method of adjusting grievances referred to in Section Four.

Section Six.

Absence of Employee for Military Service.

Until further notice by the Employer, any employee with one year or more of continuous service with the Employer, who is called or volunteers for service in the military forces of the United States of America shall receive additional compensation after termination of his employment, equal to four weeks' pay of 40 hours per week at his regular hourly base rate in effect on January 1, 1941. Proof of service with such military forces in the form of a statement from the employee's Commanding Officer or from the Draft Center, or other evidence satisfactory to the Personnel Manager of the Employer will be required before such compensation will be paid.

In addition, such employee, if employed under a written contract of employment, shall be paid the bonus and deductions, if any, as provided in Paragraph Six thereof.

Any employee qualifying as above and who completes such military service, is not dishonorably discharged, does not have a social disease, is physically and mentally able to do work in line with the position held at the time of entering into military service, has not voluntarily re-entered such service after being offered an opportunity of demobilization and who presents himself for re-employment with the Employer within forty (40) days after his release from military service, will be restored to a position of like seniority, status and pay to the position which he left, unless the Employer's circumstances have so changed as to make it impossible or unreasonable to do so. When reinstated as an employee, if complying with all of the

above requirements, service with the Employer obtained prior to induction into the military forces will be allowed on the employee's continuous service record.

Section Seven.

Management and Rules.

The management of the plant, the direction of the working forces, the right to hire, promote, demote, transfer, suspend or discharge for proper cause and the right to relieve employees from duty because of lack of work, reorganization of departments, or for other legitimate reasons, is vested exclusively in the Employer. In the event any employee believes he has been unjustly treated in the exercise of these rights by the Employer, the employee shall have the right to initiate a case under the method of adjusting grievances referred to in Section Four.

Rules and regulations, not in conflict with the said written contracts of employment or the provisions hereof, covering conditions necessary or proper for the operation of the plant and the conduct of employees on Employer's property, and specifying the penalty or penalties for the breach thereof, may be issued by the Employer, from time to time, and posted on the Bulletin Boards in the plant. Failure to follow such rules and regulations will subject employees to the penalty or penalties stated therein.

The Employer declares and the Union acknowledges that the business of the Employer is a secret business and that the employees of the Employer may not disclose to others any of the trade secrets, details or process of manufacture or equipment or other information concerning or related to the Employer's business.

Section Eight.

No Suspension of Work.

There shall be no suspension of work through strikes or any other stoppage, total or partial, on the part of the Union or any member of the Union, nor through lockouts

on the part of the Employer, during the term of this agreement.

There shall be no sabotage, tampering with or destruction of physical property, equipment, raw materials, material in process of manufacturing, finished products or sabotage of any kind by any employee. Instances of sabotage will be dealt with by the Employer, in its sole discretion, as the circumstances warrant.

Section Nine.

Vacation.

All employees on payroll on July 1st in each year who have established a continuous service record of one year or more and who have a written Employment Contract with the Employer will be granted a vacation of one week with pay, except that employees with less than two years continuous service who have actually worked less than twelve months during the fifteen months immediately preceding July 1st will receive no vacation.

The vacation week will be set by the Employer so that at least the majority of the days will, if possible, fall in the month of July and the Employer will announce the week selected on or before June 1st in each year, but in the event that unusual conditions should cause the entire plant to operate during the selected vacation week, vacation pay will be paid in addition to regular pay earned during the week. The vacation pay will be computed on the basis of each employee's base rate per hour times forty (40) hours, and an employee who has ten (10) years of completed continuous service on June 30th prior to the selected vacation week will receive 25% additional vacation pay, an employee who has fifteen (15) years of completed continuous service on June 30th prior to the selected vacation week will receive 50% additional vacation pay, an employee who has twenty (20) years of completed continuous service on June 30th prior to the selected vacation week will receive 75% additional vacation pay, and each employee who has twenty-five (25) or more years of completed continuous service on June 30th will receive 100%

additional vacation pay, but in no event shall the total vacation pay exceed the employee's base rate per hour times eighty (80) hours, regardless of length of service. Vacation pay will be subject to Social Security Tax which will be deducted from the vacation pay check. Deductions under the provisions of the written contracts of employment on account of the vacation pay will be taken from the next regular pay following the vacation period. Personnel Department records shall conclusively determine eligibility for vacation pay, under definition of continuous service contained in Section Five.

Section Ten.

Physical Examination.

The Employer reserves the right to require a physical examination of any person called back for re-employment or of any employee at any time when, in the Employer's opinion, the circumstances warrant such examination. All physical examinations will be made on Employer's time except in the case of new employees' initial examination.

Section Eleven.

It is the intention of the parties to this Working Agreement that nothing herein contained shall change, modify or amend any of the terms and provisions of the written contracts of individual employment between the Employer and those of its employees who have made or shall make such contracts.

For the Employer:
Western Cartridge Company,
For the Union:
Western Cartridge Employees,
Independent Union,

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BOARD EXHIBIT NO. 21.

Regulation for Adjusting Rates—Finish and Breakdown Rolls.

March 18, 1941. Revised—September 29, 1941.

1. The Wage Bracket:

Rolls 5, 6, 8, 9, 10 Class "A" Roller	.83—1.05
7, 11, 12, 13, 15 or 16 Class "B" Roller	.83—1.00
1, 2, 3, 4, Breakdown Rolls	.83— .95

Rate bracket steps—83—87—91—95—1.00—1.05.

When a man has received roller training for four to eight weeks and is capable of operating a roll, without supervision of an extra roller, he will be paid .83 for such work. The rate will be increased one step in the rate bracket, every six months, until the maximum is reached, providing the roller's qualification entitle him to the rate increase.

All increases to be in accordance with the qualification listed below.

2. Qualification of Breakdown Roller:

Capable of operating any of the four breakdown rolls—equal, or above the average product on, efficiency, scrap, or off gauge, as set up by the previous year.

3. Qualifications Class "B" Roller:

Capable of operating 7, 11, 12, 13, 15, or 16. Equal, or above the average set up by the previous year.

The off gauge will be based on all finished metal for the previous year, a roller must have finished 250 bar per month, to have his off gauge considered as a factor. The average will be based on each individual roll.

The rollers' scrap will also be an important factor. When compared to the other rollers on the roll he must have a rank of 1 or 2. All rollers within 300 pounds of the lowest will be ranked No. 1. The first roller having 300 pounds more than the lowest will be ranked No. 2 and all within 300 pounds of him will be ranked No. 2, No. 3, and No. 4. Posi-

tions will be determined in the same manner in considering the record of the individual roller, as well as, other good or bad records of his personal record.

4. Qualifications of a Class "A" Roller:

His qualifications must be the same as those of a Class "B" plus the ability to operate on the same basis, 5 or 6, 8, 9, or 10. He must have, at least, 6 months experience on a Class "A" roll.

When a roller is below the qualifications outlined in paragraph 2 and 3 for a period of 3 months and the management will review his case carefully and either warn him or remove him from the job.

After the Company has removed a man from the job the aggrieved employee may make his complaint in accordance with the procedure that has been agreed to by the Company and the Union.

In general each roll will be operated with a roller and two men. Extra men will be allowed as follows:

5 & 6 Rolls: An extra man all metal rolled to .032", or heavier. Two extra men on 222 Mixture, cast in the 76" or 80" mold. An extra man on .032" soft, if necessary to keep up production.

7 Roll: An extra man when running out of the water tub and all metal over 16" wide. A man will be allowed on all metal blocker over .028".

8 & 9 Rolls: An extra man will be allowed on all metal rolled .028" or heavier.

10 Roll: Two extra men on .050" and heavier. Three men when needed—to be decided by the roll foremen.

11 Roll: An extra man out of the water tub and when placing metal on a pan over .028". An extra man to be allowed when finishing metal over .020" with a tolerance, plus or minus, .0005".

16 Roll: Two extra men from .050" to .033". One extra man from .033" to .020". One man on first pass of soft metal regardless of gauge, also when necessary to cut out bad edges on hard metal.

When any promotion is to be made Mr. Renken, or Mr. Krinard, and the roll foremen, or any other interested person, will be asked to advise on who should be selected

for the next promotion. When these men have arrived at an agreement the Union representative will be asked to give his approval or disapproval. If he disapproves he must give definite reasons why and state who, in his opinion, should have the opportunity.

Seniority will be given preference, other conditions being equal. Before a man is eligible to receive roller training he must show that he has observed some of the principles of rolling. He should be able to read a micrometer, define A, B, and C finishes. He should have a reasonable knowledge of the pinches, B & S gauges, and the water or oil control for the roll he has been working on.

The rate of pay, for men being trained for rollers, will be their regular rate, unless the rate is higher than the maximum sticker rate, in which case his rate will be the maximum sticker rate.

The Company reserves the right to train men of previous exceptional training, or men having a technical education. The management will not remove a roller on a job to make room for this man.

These department provisions may be modified if an agreement is negotiated by the Union and the Company and are not to be considered as a precedent for such negotiations for the entire plant.

.....

Chairman, Independent Union.

.....

Brass Mill Superintendent.

9-30-41.
ew.

BOARD EXHIBIT NO. 23.

6-28-41.

In the Matter of
Western Cartridge Company,
Alton, Illinois,
and
Chemical Workers Union,
Local 22574—AFL.
} Case No. 44.

FINDINGS AND RECOMMENDATIONS.

1. The Secretary of Labor certified this Case to the Board June 24, 1941.

2. A panel of the Board composed of Charles E. Wyzanski, Jr., representing the public, Roger D. Lapham, representing employers, and Edward J. Brown, representing employees heard this case June 28, 1941.

3. The principal issue raised was whether the Western Cartridge Company would now recognize Chemical Workers, Local Union 22574 (AFL) as the exclusive representative of the hourly paid production and maintenance employees of the Company's smokeless powder division at East Alton, Illinois.

4. The Company operates a plant at East Alton where it manufactures small arms ammunition, explosives, brass, brass specialities, traps and targets. It employs a total of about 6500 employees in the plant as a whole and about 650 in the smokeless powder division.

5. The Company has had individual contracts with employees at various times since 1914, and continuously since 1933; and has had so-called basic and working agreements since 1937 with the Western Cartridge Employees Independent Union covering production, maintenance and other employees throughout the Company.

6. In January 1941 the Chemical Workers Local Union No. 22574 began organizational activities among the employees of the smokeless powder division of the Company. The Chemical Workers claimed a majority in that division of the Company, and asked for exclusive bargaining rights

for the production and maintenance workers in that division. The Company refused to grant such recognition on the ground that the employees of the smokeless powder division do not constitute a proper unit and on the ground of an outstanding contract with the Independent Union.

7. March 28, 1941 the Chemical Workers filed with the National Labor Relations Board a petition asking to be certified as the exclusive representative of the production and maintenance employees of the smokeless powder division of the Company. The National Labor Relations Board held hearings. At the Company's request the National Labor Relations Board subpoenaed officers of the Independent to appear. They did so. In writing they had previously stated that they did not object to the unit claimed by the Chemical Workers and that they waived any bargaining rights they might have for the employees in the Smokeless Powder Division. The National Labor Relations Board on May 15, 1941 issued a decision ruling that the smokeless powder division was an appropriate unit and directing an election therein.

8. May 26, 1941 the National Labor Relations Board conducted an election in that unit. In that election 527 were eligible to vote, 459 voted, 377 voted for the Chemical Workers and 82 voted against them. Thereupon the National Labor Relations Board on June 10, 1941 certified that the Chemical Workers are the exclusive representatives of the production and maintenance employees in the Company's smokeless powder division.

9. June 10 the Chemical Workers asked the Company to enter collective bargaining negotiations. In reply the Company, after repeating that the unit was inappropriate and that other contracts were obstacles, wrote "that the Company does not recognize * * * Chemical Workers, Local Union No. 22574, affiliated with the American Federation of Labor, as the representative for the purpose of collective bargaining under the provisions of the National Labor Relations Act of any of its employees within said proposed bargaining unit."

10. Commissioners of Conciliation conferred with the parties in Washington June 23. The Company's lawyers drafted or participated in the drafting of a proposal to be submitted to their client which provided for the Company

recognizing the Chemical Workers as the exclusive representative in the Smokeless Powder Division. The union negotiators, duly empowered for that purpose, executed the draft. The Company's executive officers refused to execute. They stated that unless the directors and perhaps the stockholders of the Company acquiesced they would not abandon the Company's right to a review in the courts of what was the appropriate unit.

11. In the hearings before the National Defense Mediation Board it at once became apparent that the principal issue which was dividing the parties was whether the Company would *now* recognize the Chemical Workers as the exclusive representative in the unit found by the National Labor Relations Board to be appropriate, or whether the Company would insist on proceeding to seek court review of that determination.

12. That this was the principal issue became undeniable when the panel asked the Vice-President of the Company whether the Company would execute a contract with the Chemical Workers which had in it only two clauses, the first providing that wages, hours, and working conditions shall be the same as those now prevailing under the Company's contract with the Independent Union, and the second providing that the Chemical Workers shall be the exclusive bargaining representative of the employees in the unit certified by the National Labor Relations Board as being appropriate. To this inquiry the Company answered that it would not agree to the second clause.

13. In trying to persuade the Company to change its position the panel presented various considerations. The panel pointed out that the Supreme Court of the United States in Pittsburgh Plate Glass Company and Crystal City Glass Workers' Union *vs.* the National Labor Relations Board, decided April 28, 1941, and the Circuit Court of Appeals in a uniform series of cases had indicated that a ruling of the National Labor Relations Board on what is an appropriate unit is virtually conclusive unless there has been a lack of procedural due process of law. Hence there is no substantial probability that an appeal to the courts on this issue would accomplish any purpose except delay. The panel also pointed out that only yesterday this Board had in a similar case recommended that a labor or-

ganization should not seek a judicial review of a determination by a state labor relations board. Duquesne Light Company, Case No. 42. See also the first point in the settlement of Minneapolis Honeywell Regulator Company, Case No. 22.

14. Not having been able to secure any agreement from the parties we are authorized by the Executive Order to make recommendations in this case.

15. In making recommendations it should be clearly understood that our purpose is not to pass upon the correctness of any decision of the National Labor Relations Board. It is not our function to determine appropriate units. But it is our duty under the Executive Order to aid in the establishment of industrial peace in defense industries. In accordance with that duty we recommend that the Company should now bargain in good faith with the Chemical Workers as the exclusive representative of the employees in the unit certified by the National Labor Relations Board as appropriate.

Signed at Washington, D. C., this 28th day of June, 1941.

Charles E. Wyzanski, Jr.,
Charles E. Wyzanski, Jr.,
Representing the Public.
Roger D. Lapham,
Representing Employers.
Edward J. Brown,
Representing Employees.

BOARD EXHIBIT NO. 24.

NATIONAL DEFENSE MEDIATION BOARD.

In the Matter of Western Cartridge Company and East Alton Manufacturing Company and Chemical Workers' Union, Local 22574—A. F. L.	Case No. 44.

Before a panel composed of Charles E. Wyzanski, Jr., representing the public, Roger D. Lapham, representing employers, and Edward J. Brown, representing employees.

Hearings held July 11, 12, 14 and 15, 1941.

PRELIMINARY RECITALS.

1. This is the same case which was the subject of hearings, findings and recommendations on June 28, 1941.

2. At that previous hearing the Board, acting through the same panel as is now sitting in this case (that is, Charles E. Wyzanski, Jr., representing employers, and Edward J. Brown, representing employees,) recommended that Western Cartridge Company should bargain in good faith with Chemical Workers' Union Local No. 22574 (AFL) as the exclusive representatives of the employees in the unit certified by the National Labor Relations Board as appropriate. That unit included "all hourly paid production and maintenance employees of the smokeless powder division of the Company, including hourly paid foremen, technical employees, and maintenance clerks, but excluding superintendents, general foremen, watchmen, and office employees."

3. The Western Cartridge Company, under date of July 2, wrote the Board a letter in which it took exception to these recommendations but stated that "If it is neces-

sary for the Company to bargain separately for this unit, then we are prepared to explore the possibilities of reorganizing the operations of the Company's plant and business and of taking the necessary steps to create a separate integrated economic unit for the so-called Smokeless Powder Division."

4. The Board, insisting that its recommendations should be complied with, on July 3, telegraphed the Western Cartridge Company that it recommended that its representatives should meet in East Alton with the Union's representatives July 5; that if no progress were made, the parties should be free to return before the Board in Washington and that production should be continued throughout the negotiations and proceedings before the Board. The Board also relayed to the Union the Western Cartridge Company's proposal to organize a new corporation to carry on the work of the Smokeless Powder Division.

5. July 5, the Western Cartridge Company telegraphed that its representatives would on that day meet the Union representatives. The telegram further stated that "Negotiations contemplated on our part shall be for and on behalf of contemplated corporation to be formed representing reorganization of operations of Company's plant and business comprising a separate integrated economic unit for the so-called Smokeless Powder Division."

6. At about the same time persons associated with the Western Cartridge Company formed a wholly owned subsidiary East Alton Manufacturing Company. The principal officers of the two companies are expected to be substantially identical. Western Cartridge has not yet transferred but plans to transfer, to East Alton the jobs which were performed by the hourly paid production employees of the Smokeless Powder Division except magazine storekeepers and probably junior physicists and junior chemists. It also plans to have East Alton assume (so far as may practically and lawfully done) obligations and contracts affecting production, sales and employment in the Smokeless Powder Division. Furthermore, it plans to transfer to East Alton the Smokeless Powder plant and

such other assets as will enable East Alton in good faith to carry out the obligation its assumes and incurs.

7. On July 5 the parties met for collective bargaining in East Alton. Some progress was made. The Union, however, regarding as improbable any further accomplishments through negotiations in Illinois, asked the Board to take the case back to Washington, in accordance with the Board's telegram of July 3.

8. July 7, the counsel for the two companies stated to the Board that he was surprised at the sudden interruption in the Illinois negotiations, as at the conclusion of the July 5 session all parties had joined in making to the press a statement of progress and a date had been set for a further hearing. He suggested that the Board encourage further negotiations in Illinois.

9. The Board, by telegram dated July 7, urged the parties further to negotiate in Illinois and if they could not agree, to return to Washington for a hearing July 11.

10. Further negotiations in Illinois proved fruitless. The Companies charged the Union with being responsible by insisting on disposing first of a union shop demand made by the Union. The Union charges the Companies with being responsible by refusing to bargain in good faith regarding the more critical questions which divided them, including not only the type of shop, but also wages and the so-called "individual contracts" later to be discussed. The Union also complained that shortly after the opening of the conference on July 5, the Companies were represented only by a plant superintendent and by lawyers and that Mr. John Olin and Mr. Spencer Olin withdrew. In this connection the Union pointed out that the direction of the two companies rested primarily with these two men and their father, Mr. F. W. Olin, who are the principal officers and the principal common stockholders as well as a majority of the board of directors. As a rejoinder to this contention, the Messrs. Olin emphasized the extent to which all of them were engaged in other corporate affairs affecting not only their own but also the national interest. Moreover, they stresses the fact that they had given broad powers to those who were engaged in the actual negotiations.

11. The Board reopened hearings in Washington July 11. The three members of the original panel were present. The Union sent its local committee and also its regional officers who were given by the membership the power to make a final commitment without the necessity of returning for ratification. The companies sent a plant superintendent and three lawyers, (two of whom were connected with different private firms, and one of whom was a corporate secretary who in *prior* negotiations at the Department of Labor did not have the power to commit the Company.) The three Olins informed the panel that these persons were at this time adequately empowered to act. However, the panel, in line with the discussion at recent Board meetings, in accordance with the precedent in the Utica & Mohawk Cotton Mills case (Case No. 23), and in the light of its own best judgment as to how a settlement in the instant case could most fairly and rapidly be achieved, requested that one or more of the Olins participate in the proceedings and further requested that in the meantime those who had assembled should continue (in the absence of the panel but in the presence of the panel's secretary) to carry on negotiations with the hope of narrowing

12. These requests were honored. The parties negotiated some relatively minor matters Friday afternoon, July 11 and Saturday, July 12. The three Olins and a labor relations counsellor arrived on Monday, July 14. Thereupon the panel reconvened the hearings and extended discussions occurred on that day and the day following.

13. At the outset of the session of July 11, the Union agreed that it would be prepared to negotiate its labor contract exclusively with East Alton on the understandings (a) that all the jobs included by the National Labor Relations Board in its finding of an appropriate unit at Western Cartridge should be transferred to East Alton, (b) Western Cartridge should furnish East Alton with adequate assets to fulfill appropriate labor obligations, (c) neither the NLRB nor this Board lost such jurisdiction and power as either tribunal might have with respect to matters in controversy affecting the parties, and (d) East Alton would recognize the Union as the exclusive repre-

sentative of the employees in the jobs embraced in the NLRB's certificate. The Company agreed to (b) and (d). The panel informed the Union that no steps here taken could prejudice any jurisdiction and power the National Labor Relations Board might have, particularly in view of the second sentence of Section 10 (a) of the N. L. R. Act; and that the National Defense Mediation Board would not release such jurisdiction as it might have over Western Cartridge but would merely add to the already included parties the name of the East Alton Manufacturing Company. As to condition (a), the transfer to East Alton of all hourly paid production jobs in the Smokeless Powder Division, more is said below.

14. At the outset of the July 14 session, the parties agreed that the principal issues which still divided them were: (a) the individual contracts, (b) the type of shop (sometimes called the "union security issue"), (c) wage rates, (d) vacations, (e) the extent to which Western Cartridge would be relieved of a duty to bargain for such employees of the Smokeless Powder Division as were not transferred to East Alton, and (f) seniority. (It should be added that at this stage there also was some difference of opinion as to whether an employee should be given a copy of any medical report on his health. That issue, however, was subsequently negotiated to a mutually satisfactory conclusion and requires no further statement here.)

15. The session on July 14 brought none of these six issues to a conclusion. Much time was spent on general discussions of wages and an attempt to inform the panel of the practices on wages presently prevailing in the Smokeless Powder Division.

16. In that Division, all of the 550 employees within the coverage of the National Labor Relations Board's certificate are hourly paid. That is, there is no bonus, piece or incentive system.

17. Most of these employees have been taken on within the last year to meet the sudden expansion principally consequent upon orders placed with Western Cartridge by Great Britain. Thus the Division's payroll has risen in one year from 110 to 550.

18. The minimum rate among these 550 employees is 52¢ an hour. The average rate is 71.8¢ an hour.

19. These employees fall into three main divisions: roughly 330 in production, roughly 125 in laboratories, and roughly 95 in maintenance. Production subdivides itself into 7 classifications, laboratories into 4 classifications, and maintenance into 20 classifications.

20. The Company's practice as to wages is illustrated in the following rough break-down of the production division. In this breakdown the figures were derived from the Companies' oral testimony. An accurate, detailed statement of the wages is set forth in the Companies' Exhibit C, but these details are too complicated to be repeated here. An employee is hired at a learner's rate, 58¢ an hour. All learners (of whom there are now about 20 in production) are paid that rate. It is expected that after about three months a learner will step up another grade, and that on due time, if he has ability and efficiency and if there is an opening, he may be given a personal increase or upgraded as the case may be. The grades and pay scales above learners in the production division are: truck drivers' helpers 58¢ to 62¢ an hour; truck drivers (who together with helpers are about 30 in number) 63¢ to 75¢ an hour; helpers (about 75 in number) who are paid 60¢ to 66¢ an hour; powder operators B (about 75 in number) 69¢ to 72¢ an hour; powder operators A (about 75 in number) 75¢ to 79¢ an hour; and hourly paid foremen (about 12 in number) 83¢ to 91¢ an hour.

21. After the general exploration of the wage issue, the panel and the parties on July 14 discusses principally the individual contracts and the type of shop. After formal adjournment that day, there was further informal discussion between the parties on these and other subjects.

22. On July 15 the parties appeared as requested at the Board's offices again. In the hope of securing greater progress, the panel conferred with each group separately in the morning. These conferences plainly disclosed that further collective bargaining would not be successful unless the issue of the individual contracts were first resolved. In vies of this impasse and in view of the importance of continued production at this plant to effectuate

the national policy of supplying Great Britian with arms and ammunition necessary for its and our national defense, the panel is of the opinion that this case is appropriate for findings and recommendations pursuant to Section 2 (d) of the Executive Order creating the Board.

Findings and Recommendations.

A. Individual Contracts.

23. Issue: The first issue on which the panel makes findings and recommendations related to individual contracts.

24. Facts: Beginning in 1914 and continuing to date, with the exception of an intervening period from 1920 to 1923, Western Cartridge Company has offered each of its employees, after he has served a probationary period, an individual contract. The full text of that contract in its present form is attached hereto and lettered "A". Approximately 5,100 employees of Western Cartridge have executed contracts of this type. These contracts were executed at different times, but in each case the contract expires one year after execution. Included in these 5,100 are 428, or all but two, of the employees here involved for whom this Union is the certified collective bargaining agent.

25. Union's contentions: The Union claims that these individual contacts are invalid as a matter of law, particularly in view of the National Labor Relations Act and the decisions thereunder, and in view of the certificate issues by the National Labor Relations Board. The Union points to paragraphs 3, 4, 6, 8 and 9 which it interprets as permitting the Company to discharge an employe who goes out on strike and as permitting the Company to withhold a promised 6% annual bonus if during the year he strikes. The Union also places some reliance on the point that these contracts were not signed voluntarily since they were presented to employees for signatures by the Company, and the Union asserts that the mere employment relationship puts the employee in such a position that on matters of this sort an employee does not act with complete free will

which the Union says the law guarantees him. Some reference is also made to the fact that some of the terms included in the contract so plainly relate to general wages, hours and working conditions as not to be appropriate for individual negotiation once a collective bargaining representative has been certified. Furthermore, legal arguments aside, the Union asserts that these individual contracts are in their spirit contrary to and hence subversive of sound collective bargaining relationships. For these reasons the Union seeks to have this type of contract, so far as it affects employees in the Smokeless Powder Division, terminated by Western Cartridge, not assumed by East Alton, and not hereafter offered by East Alton.

26. Companies' Contentions: The Companies' contention is that these individual contracts are lawful and are conducive to a sound employment policy. The Companies stress the thrift features of the contracts, and the concern of the Companies in protecting their patents and trade secrets. The Companies assert that the contracts were executed voluntarily that an employee who does not want such a contract can (like the two present non-signatories) decline to execute such a contract without loss of his job, and that (as Western Cartridge's contract with an unaffiliated union shows) these contracts are not repugnant to collective bargain. Western Cartridge also draws to our attention the indirect impact of any disposition of the 428 contracts in the Smokeless Powder Division upon the balance of the approximately 5,100 similar contracts. Both Companies contend that the contracts are not terminable at the will of the employer alone. In making this contention, East Alton does not assert that it, as distinguished from the Western Cartridge Company, is now bound by such contracts, and moreover neither Company contends that if it were directed by a governmental agency to disclose such contracts it would not be protected by the force majuere clause in Article 9 of these contracts exonerating the Company for "causes beyond the control of the Company". Both Companies also suggest that if the contracts were unlawful, there are available appropriate judicial processes to test the matter. It is not clear whether the Companies take the position that, despite the second sentence of Sec-

tion 10 (a) of the National Labor Relations Act, a judicial tribunal could properly pass on the question in any way except upon review of an order of the National Labor Relations Board.

27. Proposals advanced during the collective bargaining process under Section 2 (a) of the Executive Order; During the collective bargaining stage of those proceedings, the panel suggested three alternative solutions for consideration and bargaining by the parties. Succinctly stated, these were the alternative proposals: (1) that the question of the legality be referred for final determination by the Chairman of the Board or by any neutral qualified person mutually acceptable; (2) that neither company should take steps to carry out those individual contracts with any of the employees of the Smokeless Powder Division until and unless required so to do by a court of competent jurisdiction; and (3) that all parties should submit to the National Labor Relations Board the question of law upon an agreed statement of facts and upon a stipulation for expeditious consideration and that pending judicial review, if any, of that Board's order, the parties abide by that order. The Union was willing to accept any one of those alternatives. The Companies were unwilling to accept any of these proposals or, during the course of the collective bargaining in Washington, to suggest any alternative course. On Wednesday, July 23, after these recommendations were in draft form, Mr. John Olin informed the panel that he had in a confidential letter to a third party for transmission to the panel indicated three possible methods of dealing with individual contracts. The relevant parts of this letter are quoted in Exhibit "C" attached hereto.

28. Recommendations: Regardless of whether the individual contracts are or are not valid under the National Labor Relations Act, the panel regards these contracts in their present form as being inconsistent with a sound collective bargaining relationship between East Alton Manufacturing and this Union. We, therefore, recommend that East Alton Manufacturing should not assume or offer to its employees any such individual contracts; that Western Cartridge Company or East Alton Manu-

facturing Company should repay as of August 1, 1941, to each employee in the unit represented by this Union the amount he personally has paid to the Companies under his contract; that Western Cartridge Company and East Alton Manufacturing Company should take no other steps to enforce the individual contracts with respect to employees in the unit represented by this Union; and that the Union execute on behalf of those it represents whether members or not, a release from liability on these individual contracts. This recommendation does not preclude the East Alton Manufacturing Company from exacting from each employee an appropriate personal pledge confined to the non-disclosure of patents and trade secrets.

B. Type of Shop.

29. Issue: The second issue on which the panel makes findings and recommendations relates to the type of shop, or as it is sometimes called, "Union security."

30. Union's contentions: The Union seeks a union shop in which every present employee within the unit, whether or not he is now a member of the Union, must be and remain a member of the Union in good standing as a condition of employment, and in which every new employee in the unit must, after a probationary period of 30 days, become and remain a member of the Union in good standing as a condition of employment. The Union agrees that it will take into membership every present employee of the Smokeless Powder Division but it will take in only such future employees as meet the standards of the Union. In support of its position, the Union emphasizes the special facts in this case. The Unions asserts that the Western Cartridge Company and East Alton Manufacturing Company in their dealings with the Union in Illinois and in Washington and in what the Union claims are the Companies' dilatory tactics before this Board have shown an obvious hostility toward collective bargaining which reasonable ground for fear that unless the Union is protected by some form of union security provision the management will undermine and seek to eliminate it. Among other indicia of the attitude of the manage-

ment, the Union makes reference to the following: Western Cartridge's refusal promptly to honor the National Labor Relations Board's certificate or this Board's recommendations of June 28, 1941; Western Cartridge's creation of East Alton as part of what the Union fears is a devise for checkmating its normal growth; the Olin's refusal to adopt a formula evolved at the Department of Labor by Western Cartridge's own lawyers (acting admittedly only as lawyers, not as corporate officers); the withdrawal of the Olins personally from negotiations in St. Louis, coupled with their delay in coming to and their promptness in withdrawing from hearings before this Board; the conferences which supervisory officials of Western Cartridge had with individual employees in St. Louis to secure their views on individual contracts at the very time that issue was the subject of collective bargaining negotiations in Washington before this Board; the grant by Western Cartridge to the unaffiliated union of a wage increase averaging 5% effective July 3, despite the fact that earlier in the same week both Western Cartridge and East Alton had not made any offer or concession to the American Federation of Labor union in the hearings before this Board in this case; and the charges (as yet untried) filed before the National Labor Relations Board to the effect that Western Cartridge has violated the National Labor Relations Act by discriminating against union members.

31. Companies' contentions: Despite Western Cartridge's earlier position of going to court to contest the National Labor Relations Board's certification, East Alton has now recognized the Union as the exclusive representative of the employees of the company in those classifications which that Board grouped together as an appropriate unit. The Companies are not ready to grant voluntarily a closed shop or union shop. In their brief, the Companies stress their objections to the Union's proposal: (1) "This proposal of the Union would mean that approximately two hundred employees in this separate unit, who have up to now refused to join the Union, would be compelled to become members! (Co. Br. 9); (2) There is an "obvious inappropriateness of such (closed or union

shop) restrictions upon a man's right to work and an employer's right to select his employees in the present emergency, particularly having in mind the occupational responsibility of the employees by reason of the character of the work" (Co. Br. 10); and (3) in view of the Companies' willingness to recognize individual assignment of wages for Union dues, there is no need for the union to "fear a loss of its present membership and hence to insist upon the 'freezing' of such membership for the duration of the contract". The Companies also allege that the Union's demands in this case and its attitude during negotiations in St. Louis were such as to indicate that a union shop would not work satisfactorily.

32. Recommendations: The panel recommends that East Alton Manufacturing Company and the Union include in a collective bargaining contract the following provisions:

"The Company agrees that any present employee who on June 24, 1941, (the date this case was certified), was a member of the Union or who has become a member of the Union since June 24, 1941, shall as a condition of continued employment maintain membership in good standing; and any employee who hereafter, during the life of this agreement, becomes a member or is reinstated as a member of the Union shall as a condition of continued employment maintain membership in good standing."

In making this recommendation, the panel notes that it in no way impinges upon the freedom of any individual who has nor chosen to join the Union. It does not exercise the type of compulsion specifically adverted to in the Companies' brief. It does not restrict the employer in the choice of his employees,—a restriction to which, as noted above, the employer expressed particular opposition. It goes only so far as to preserve the Union in the status it has already achieved and may achieve through voluntary adherence of employees. It protects the Union in its capacity to fulfil its contract, and makes certain that those who authorized the Union to act for them will aid their agent in performing its obligations.

This case seems to us to present strong evidence that some formal assurance of a stable status of the parties

is necessary here. In the hearings before this Board the Companies showed what at best must be described as a complete unfamiliarity with the realities of collective bargaining. Either by accident or by design, the management resorted to practices which undermined the confidence of others sitting at the same table with them. If the management's tactics were not deliberately dilatory they at any rate gave that impression. If by wage increases to others than those represents before the Board the management meant merely to carry on in good faith bargaining with the independent union, the management nonetheless gave the appearance of discrimination. A workman might reasonably conclude that these Companies did not want and were going to try to eliminate the members of this Union. Against this fear, based upon the recent record, the Union members are, we believe, entitled in this case to be protected. We add that we hope that there are no grounds for the fear the Union has expressed and that the effect of our recommendation will be to make for better relations by the removal of suspicion.

C. Wage Rates.

33. Issue: The third issue on which the panel makes findings and recommendations relates to wage rates.

34. Facts: As already noted, the present hourly rates for the Smokeless Powder Division are at a minimum of 52¢ an hour and an average of 71.8¢ an hour. We are not informed whether this figure of 71.8¢ is calculated on the basis of the basic rate for a 40-hour week or whether it is increased by including in the computation over time work for which time and one-half is paid.

35. From the brief submitted by the Companies, we learn that since January 1, 1941, Western Cartridge has granted "615 separate wage increases affecting a total of 463 separate employees in the unit" and that these wage increases are "equivalent to approximately 10%." (CO. Br. 13) We cannot tell from this submission whether basic wage rates have been increased. The statement would be consistent with an entirely different interpretation; For example, that the learners' or the helpers' basic rate has not

been increased, but that individuals have received personal increases either by being advanced from one job to another or by being given an individual merit raise within a particular classification.

36. As previously noted, Western Cartridge as recently as July 13, 1941, negotiated effective as of the same date, a wage increase averaging 5% for employees outside the Smokeless Powder Division.

37. Wage data was submitted by the parties. In addition, the Bureau of Labor Statistics of the Department of Labor has given us the following information as to plants (other than Western Cartridge) which have as their major product smokeless powder and which report wage data to the bureau: in April 1941 the five plants then reporting averaged 88.3¢ per hour (including overtime hours); in the same month the hourly rate in the lowest wage plant then reporting averaged 71.1¢ including overtime hours or approximately 69.7¢ excluding overtime hours, and in the highest wage plant then reporting averaged 97.9¢ including overtime hours or approximately 97¢ excluding overtime hours; in June 1941 the four plants then reporting averaged 86.7¢ per hour (including overtime hours) in the same month the hourly rate in the lowest wage plant then reporting averaged 74.9¢ including overtime hours or approximately 69.4¢ excluding overtime hours and in the highest wage plant then reporting averaged 104.5¢ per hour including overtime hours or approximately 104.4¢ excluding overtime hours. Some of these plants may be engaged in the manufacture of powder as well as the processing of powder.

38. Union's contentions: The Union contends that substantial wage rates increases, in some classifications as high as 50 per cent, are warranted because of the earnings and profits of the Western Cartridge Company, the nation-wide scope of its business, the hazard of the work, union scales in St. Louis and the bonus now available to Western Cartridge employees under the individual contracts which the Union seeks to have terminated. The Union proposes a minimum of 78¢ an hour (Union Br. 7).

39. Companies' contentions: The Companies contend

that their present wage scale is satisfactory if "treated first, by the wages being paid generally in the Alton industrial district, in which they are located; and, second, by wages being paid in those explosive plants which by reason of geographical location, similarity of operations and products, and otherwise are most nearly comparable." (Co. Br. 11.)

40. Recommendations: The panel, upon the basis of the evidence before it and of its own limited knowledge, cannot intelligently judge what would be fair rates of wages in the various classifications of the Smokeless Powder Division. From the fact that Western Cartridge has recently given other employees a raise and from the general data supplied by the Bureau of Labor Statistics, the panel is of the opinion that some wage increase is due. The panel does not suppose that a wage increase of the magnitude proposed by the Union is, however, due or appropriate. The panel is not prepared to resolve this issue by an arbitrary proposal of a wage increase of a fixed percentage or a fixed number of cents. Instead it divides its recommendations into these two parts:

(a) The Companies or one of them shall, as of July 13, (the date when Western Cartridge gave wage increases to other employees) give to the employees in jobs formerly grouped together in the Smokeless Powder Division, wage increases averaging not less than the 5% which Western Cartridge gave its other employees.

(b) The Companies and the Union shall submit to arbitration the determination of whether the Companies should give to the employees in those jobs which formerly constituted the Smokeless Powder Division any wage increases. The arbitration shall be by three persons, one named by the Companies, a second by the Union, and the third by those two. If the three are not named within seven (7) days after these recommendations are issues, i. e., by August 1, 1941, then this Board shall forthwith name one person to act as arbitrator and he shall exercise all the arbitral functions. The arbitrators or arbitrator shall have the power to change general basic wage scales by a fixed percentage or amount and/or to change particular

basic wage scales in the several classifications among the employees in those jobs which formerly constituted the Smokeless Powder Division. These wage changes, if any, shall be retroactive to the date the hearings in this case closed, i. e., July 15, 1941. These wage changes shall be accepted by both parties, and, unless the arbitrators or arbitrator for good cause shown otherwise provide, shall be binding for one year. In reaching a determination the arbitrators or arbitrator shall state findings and reasons as well as conclusions.

D. Vacations.

41. Issue: The fourth issue on which the panel makes findings and recommendations relates to vacations.

42. Facts: The Companies now give one week's vacation with pay for any employee who has had one year of service with the Western Cartridge Company or its affiliates. To an employee who has had 10 years of service, the Companies give an additional vacation of 25% of one week's pay. After 15 years of service, the Companies give an additional 25% of one week's pay; after 20 years an additional 25%, and after 25 years an additional 25% of one week's pay is given.

43. Union's contentions: The Union requests a paid vacation of one week after one year of service and two weeks after two years of service.

44. Companies' contentions: The Companies are prepared to revise their schedule of vacations so that an employee after one year of service gets one week's vacation with pay (just at present) and that after every five years he gets for that five years service 25% of one week's additional vacation with pay.

45. Recommendations: The panel is of the opinion that the question of vacations with pay is so closely allied to the question of wages that it, like the wage question, should go to the arbitrators or arbitrator provided for in Paragraph 40 (b) of these findings and recommendations. The arbitrator or arbitrators shall have the power to determine what vacations with pay shall be given by the Companies on and after July 15, 1941 (the date the hearings in this

case closed) to the employees in the jobs which were formerly grouped together in the Smokeless Powder Division of the Western Cartridge Company. The parties shall be bound by the award of the arbitrators or arbitrator. In making an award, the arbitrators or arbitrator shall set forth their findings and reasons as well as their conclusions.

E. Jobs in the Smokeless Powder Division Not Transferred to East Alton Manufacturing Company.

46. Issue: The fifth issue on which the panel makes findings and recommendations relates to the status for purposes of collective bargaining of those jobs formerly in the Smokeless Powder Division of Western Cartridge which were included by the National Labor Relations Board in the unit of election but which have not been transferred from Western Cartridge to East Alton Manufacturing Company.

47. Facts: Representatives of the Companies indicated that they might or might not transfer from Western Cartridge Company to East Alton Manufacturing Company the jobs known as magazine storekeepers, junior physicists and junior chemists, which were within what the National Labor Relations Board has found to be an appropriate unit for which the Union has been certified as the collective bargaining representative.

48. Union's contentions: The Union contends that if any jobs in the unit found by the National Labor Relations Board to be appropriate are not transferred from Western Cartridge, then for those employees Western Cartridge is under duty to bargain with the Union.

49. Companies' contentions: The Companies contend that insofar as jobs are not transferred from Western Cartridge to East Alton, there is no duty on the part of the company to bargain for them with this Union.

50. Recommendations: Under its recommendations of June 28, 1941, the panel recommended that Western Cartridge Company should bargain with the Union for the employees in all the jobs in that unit which was found by the National Labor Relations Board to be appropriate. Necessarily this recommendation embraced the magazine storekeepers, the junior physicists and the junior chemists.

Moreover, quite apart from this Board's earlier recommendations, it would appear that Western Cartridge Company's duty in the premises was clearly defined by Section 8(5) of the National Labor Relations Act and that it could not escape the duty to bargain with the Union as to those employees who continue in jobs which originally were in the unit found by the National Labor Relations Board to be appropriate. Accordingly we recommend that if Western Cartridge Company does not transfer the jobs of magazine storekeepers, junior physicists and junior chemists to East Alton Manufacturing Company, it should bargain collectively respecting them with the Union. Furthermore, regardless of whether the jobs just referred to are or are not transferred from Western Cartridge to East Alton, all our recommendations (including those relating to individual contracts, type of shop, wage rates, vacations and seniority) should be construed as applicable to those jobs.

F. Seniority.

51. Issue: The sixth issue on which the panel makes findings and recommendations relates to seniority.

52. Facts: At the conclusion of the hearings before the panel on July 15, 1941, the parties agreed to negotiate the question of seniority in the presence of the Secretary to the Panel, Mr. Gill. A seniority clause, a copy of which is annexed hereto lettered "B" was drafted and agreed to by Mr. Schotters, plant superintendent of the companies (the only representative of the Companies present), and by the Union committee, in the presence of Mr. Gill.

53. Union's contentions: The Union is willing to take the seniority clause negotiated on July 15, 1941.

54. Companies' contentions: The Companies apparently take the position that the seniority clause attached hereto "might furnish a basis for working out a final agreement on this question." (Co. Br. 15). This statement seems to be the equivalent of a repudiation of the negotiations hitherto conducted.

55. Recommendations: The panel is of the opinion that the seniority clause as embodied in the annexed exhibit

"B" furnishes a satisfactory working arrangement and should be incorporated in a collective bargaining contract between the parties.

The Board requests each party to notify the Board of its acceptance of these recommendations not later than July 28, 1941.

Signed this 24th day of July, 1941.

(Signed) Charles E. Wyzanski, Jr.,
Charles E. Wyzanski, Jr.,
Representing the Public.

(Signed) Roger D. Lapham,
Roger D. Lapham,
Representing the Employers.

(Signed) Edw. J. Brown,
Edward J. Brown,
Representing Employees.